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EXTRAORDINARY

PART II—Section 3

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No. 175] NEW DELHI, MONDAY, JULY 6, 1953

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 25th June 1953

S.R.O. 1341.—Whereas the election of Shri A. S. Subbaraj of Bodinayakanur, Periyakulam Taluk, Mathurai District, Madras State, as a member of the Legislative Assembly of the State of Madras, from the Uthamapalayam constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri M. Muthiah of 1/13, Edwards Elliots' Road, Mylapore, Madras-4;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, TANJORE

PRESENT:

Sri K. S. Venkatraman, I.C.S.—*Chairman*.

Sri R. Rajagopala Ayyar, B.A., B.L.—*Member (Judicial)*.

Sri P. R. Narasimha Ayyar, B.A., B.L.—*Member (Advocate)*.

Friday, the 12th day of June, 1953

ELECTION PETITION No. 71 of 1952

BETWEEN:

M. Muthiah—*Petitioner*.

AND

1 A. S. Subbaraj,

2 R. Sonaimuthu,

3 K. S. Ramaswami—*Respondents*.

Petition dated 27th March, 1952, under Section 81 of the Representation of the People Act, 1950 and Rule 119 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, to set aside the election of the returned candidate, the 1st respondent, and either declare the petitioner duly elected as a result of such setting aside, or declare the necessity for a re-election, to the Madras State Assembly, for the Uthamapalayam Constituency.

This petition coming on for hearing before the Tribunal on the 7th, 8th, 9th, 11th, 12th, 13th, 14th, 18th, 20th, 21st, 22nd, 23rd, 25th, 26th, 27th and the 28th

days of May 1953, in the presence of Sri A. Lakshminarayana Ayyar, Sri P. Subramaniam and Sri S. V. Ramani, advocates for the petitioner, of Sri A. Vaidyanatha Ayyar and Sri K. Srinivasan, advocates for the 1st respondent, and respondents 2 and 3 being *ex-parte*, and having stood over to this day for consideration, the Tribunal passed the following.

ORDER

This is a petition under Section 81 of the Representation of the People Act, 1951 (referred to as the Act hereafter) to set aside the election of Sri A. S. Subbaraj, the 1st respondent in the petition, as a member of the State Legislative Assembly at the election held on 16th January, 1952 in the Uthamapalayam Constituency. The 1st respondent stood on the Congress ticket and secured 25,939 votes. The petitioner, who was the Socialist candidate, secured 17,069 votes. The 2nd and the 3rd respondents, who were the other two contesting candidates, secured considerably less number of votes and in fact forfeited their deposits.

2. The petitioner contends that the election was vitiated by corrupt and illegal practices on the part of the 1st respondent and his agents, namely bribery of voters, treating them with supplies of food, transporting them in conveyances at the expense of the 1st respondent, intimidation of the workers of the petitioner, intimidation of the Socialist voters and the breaking of their queues and canvassing by Congressmen inside the booths. The petitioner also makes a general allegation that the polling personnel consisted mostly of persons who were virtually subordinates of the 1st respondent, that consequently it was easier for the 1st respondent to indulge in the above malpractices and that the grievances of the petitioner and his agents to the polling personnel were not heeded. The petitioner seeks to set aside the election of the 1st respondent on these grounds and also prays for the seat himself but, at the time of arguments, this prayer for seat was given up.

3. The 1st respondent in his statement of objections denies the above allegations and contends that the election was a fair one. The 2nd respondent filed a statement siding the petitioner but later absented himself. The 3rd respondent too allowed the petition to proceed *ex parte*.

4. The following issues were framed:—

- (1) Whether the 1st respondent by himself or through his agents or men with his connivance was guilty of purchasing votes by bribery as alleged in paragraphs 4 to 6 of the petition?
- (2) Whether any voters were treated with food supplies as mentioned in the petition, by the 1st respondent, his agents or men with his connivance?
- (3) Whether any voters were brought to the polling booths in conveyances hired by the 1st respondent, by his agents or men with his connivance?
- (4) Whether the charges of threat or intimidation alleged in paragraphs 13 to 16 of the petition are true?
- (5) Whether the said acts were done by the workers of the 1st respondent and with his active connivance as alleged and whether they amount to undue influence under Section 123(2) of the Representation of the People Act, 1951?
- (6) Whether they amount to coercion or intimidation under Section 100(1) of the Representation of the People Act, 1951?
- (7) Whether the act of coercion or intimidation alleged in paragraph 18 of the petition is true and whether it was connived at by the 1st respondent or his agent?
- (8) Whether the acts mentioned in issues 1 to 4 and 7 amount to corrupt practices for which the election of the 1st respondent or the election as a whole has to be set aside or can they be condoned under Section 100(3) of the Act?
- (9) Whether the acts of canvassing within the booths, breaking up queues, and threats alleged in paragraph 19 of the petition are true and whether they were at the instance of the 1st respondent or by his agent as alleged therein and whether the same has materially affected the result of the election?
- (10) Whether the 1st respondent promised the village elders of Melachinihalacheri to build a public school in the village and pay the said elders Sri Nagappan Chettiar and others moneys on 14th January, 1952 and thereby procured votes?

- (11) (a) Whether as stated in the 2nd respondent's statement the ballot boxes were tampered with on the night of 17th January 1952 by the Returning Officer?
- (b) Whether the election of the 1st respondent can be set aside on the above ground when the petition does not allege it?
- (12) Whether the election has not been a free election as alleged and has to be declared void?
- (13) Whether the election of the returned candidate has to be declared void?
- (14) Whether the petitioner is entitled to be declared as duly elected?
- (15) To what relief if any is the petitioner entitled?

5 Issue 1—The first instance of bribery which is alleged in the petition is contained in paragraph 4 and is to the effect that "on or about 9th January 1952 the 1st respondent sent money through one Hanifa of Bodinayakanur to one Paramasivam Naidu the 1st respondent's booth agent at Sankarapuram for purchasing votes and the said Paramasivam Naidu, Vasudeva Naidu and Muthuswami Naidu distributed the money in Sankarapuram and two neighbouring villages." This averment is denied in the counter and it is alleged that Paramasivam Naidu is a partisan of the petitioner (see paragraph 8 of the objection statement of the 1st respondent).

6 At the trial the petitioner examined one K Ramiah (PW 16) to prove the allegation. His evidence is that about a week before the election Paramasivam Naidu, Vasudeva Naidu and Muthuswami Naidu, who were workers of the 1st respondent during the election came to the house of one Balagurusami Naidu, a prominent man of the place and told him that the 1st respondent had sent money through one Ali Baba for purchasing votes. At the suggestion of Balagurusami Naidu they paid Rs 10 to Balagurusami Naidu and another sum of Rs 10 to a neighbour Alagirisami Naidu. Paramasivam Naidu also noted the names of five other persons mentioned by Balagurusami Naidu to whom bribe had to be paid at that rate and then went away. PW 16 proceeds to say that some three days later when he was talking with Paramasivam Naidu who was in a way related to him in the Co-operative Society buildings, Paramasivam Naidu wrote a letter pasted it in an envelope kept it on the table and went out to make water asking PW 16 to wait, so that they might together go and take coffee. PW 16 then noticed that the letter was addressed to the 1st respondent and out of curiosity he pilloined it. Afterwards they went to the coffee hotel. PW 16 then went away, on a cycle to Bodinayakanur (four miles away) and handed over the envelope to the petitioner (PW 25). PW 25 opened it and found that the letter inside, namely Ex A 15 (Ex A 14 is the envelope) was addressed by Paramasivam Naidu to the 1st respondent and alleged that the 1st respondent had sent Rs 200 through Hanifa for purchasing votes and explained how the amount had been spent. It also contained other similar allegations. PW 25 questioned PW 16 about the contents of the letter and PW 16 confirmed it to the extent he knew. PW 25 has also given similar evidence (see paragraphs 3 4 23 and 31).

7 Both PWs 16 and 25 profess to identify the handwriting of Paramasivam Naidu in Exs A-15 and A 14. For that purpose the petitioner has also marked Ex A 42, which is the form of appointment of Paramasivam Naidu as polling agent of 1st respondent and which contains the signature of Paramasivam Naidu. PW 25 says that Paramasivam Naidu was the President of the Congress Election Committee at Sankarapuram and to substantiate his statement he has filed Exs A-21, A-21(a) and A-22. Ex A-21 is the cyclostyle letter by 1st respondent addressed to the President of the Village Congress Panchayat, Sankarapuram, in which the 1st respondent seeks support for his candidature. Ex A-21(a) is the postal envelope. Ex A-22 is a similar printed appeal signed by the 1st respondent, dated 26th November 1951 and addressed to T Paramasivam Naidu, Member of the Congress Panchayat Committee at Sankarapuram.

8 The witnesses who have been examined on the side of the respondent to rebut this evidence are RWs 22 37 and 38. RW 38 is the 1st respondent. RW 37 is Sri K Srinivasan an advocate at Periakulam and 1st respondent's Chief Election agent. RW 22 Vasudeva Naidu worked for the 1st respondent in Sankarapuram. He denies that he by himself or in company with Paramasivam Naidu and Muthuswami Naidu went to the house of Balagurusami Naidu and purchased votes as alleged by PW 16. RW 37 has sworn that at about 9-30 A.M., on 16th January, 1952 when he went to the polling station in Sankarapuram in the course of his rounds, one Sundaram Ayyar the clerk of the 1st respondent in Madurai office brought to his notice that Paramasivam Naidu, who was the polling agent for the 1st respondent in the male booth (booth No 1 polling

station No 103) had not been discharging his duties properly and was friendly with the polling agent of the petitioner. R.W. 37 found Paramasivam Naidu talking with the polling agent of the petitioner and that Paramasivam Naidu had not marked the voters who had already voted in the voters' list supplied to him. He therefore thought that the complaint about Paramasivam Naidu was well-founded and therefore relieved Paramasivam Naidu of his duties as polling agent at once and asked R.W. 22, who was the 1st respondent's polling agent in the adjoining female booth, to look after the interests of the 1st respondent in the male booth also. That night R.W. 37 informed R.W. 38 about this. R.Ws. 22 and 38 corroborate R.W. 37. R.W. 38 swears that he has not spent or sent any money for purchase of votes at all.

9. We have no doubt that the case of the petitioner cannot be true. If such a valuable letter like Ex. A-15 came into the hands of the petitioner four days before the election as now stated by P.Ws. 16 and 25 and if further P.W. 16 informed P.W. 25 immediately that he personally knew the payment of the bribe to Balagurusami Naidu and Alagirisami Naidu, those facts would surely have been mentioned in the petition. On the other hand, paragraph 4 of the petition is very bald as we have already extracted. It does not refer to the names of Balagurusami Naidu and Alagirisami Naidu or to the fact that P.W. 16 knew the payment of the bribe and above all to the incriminating letter Ex. A-15. The petitioner says that he mentioned these facts to his counsel but that his counsel said that it was unnecessary to refer to them specifically in the petition. The explanation is hardly acceptable, particularly having regard to Section 83 of the Act. Further, if the petitioner had come into possession of such a document on 12th January 1952 itself he would straightaway have made a complaint about it to the authorities and instituted appropriate proceedings against the 1st respondent collecting evidence at least immediately after the election, which he admittedly did not do. The petitioner is an educated intelligent young man who was quick to send telegrams on the 15th, 16th and 17th January to the authorities about some other matters far less substantial (see Exs. A-18, A-19 and A-23 to A-28) and he is not the sort of person who would have kept quiet if he had got such a trump-card like Ex. A-15 on 12th January, 1952 itself. It is fairly clear that Exs. A-15 and A-14 must have been fabricated only after the petition and, at any rate, could not have come into the hands of the petitioner on 12th January 1952 as alleged.

10. The evidence of P.W. 16 is improbable in the extreme. It is most unlikely that Paramasivam Naidu, if he was worth his salt to the 1st respondent, would have paid the bribe openly in the presence of a person like P.W. 16 who is obviously a partisan of the petitioner and must have been known to Paramasivam Naidu to be such. It is equally improbable that Paramasivam Naidu should have resorted to a letter to his principal on such matters when he could easily have contacted the 1st respondent personally (the distance between Sankarapuram and Bodynayakanur being only four miles) and even if Paramasivam Naidu wanted to write a letter, surely he would not have been careless enough to place it on the table allowing P.W. 16 to purloin it, and, what is more, in not noticing after he returned from answering his calls of nature that the letter was missing. The evidence of P.W. 16 is clearly artificial.

11. P.W. 16 is hard put to it to explain why he should have gone to the house of Balagurusami Naidu. First he explained that it was only a casual visit but later thought that this was not good enough and resorted to the usual explanation that he went to take Balagurusami Naidu to purchase bulls. Balagurusami Naidu had agreed to accompany him but still P.W. 16 chose to remain there till Paramasivam Naidu and his companions turned up fifteen minutes later.

12. The evidence of R.W. 22 is that Balagurusami Naidu is worth Rs. 40,000. According to P.W. 16 himself, Balagurusami Naidu is worth at least Rs. 15,000 and is also the leader of the community. It is unlikely that he would have stooped to receive the paltry amount of Rs. 10 as a bribe.

13. According to the petition, the money was sent by the 1st respondent to Paramasivam Naidu through one Hanifa and that is also the case in Ex. A-15. But P.W. 16 refers to one Ali Baba and there is no evidence that Ali Baba is an alias for Hanifa. Evidently P.W. 16 forgot the name which was taught to him. Indeed it is even doubtful whether P.W. 16 was at all at Sankarapuram in January 1952. He is a permanent tailor at Madurai for the past twenty years and would have us believe that he went to Sankarapuram just six months prior to the election, closing his shop and resumed his business at Madurai six months after the election. Apparently, he had no reason to close down his shop and go to his village at all.

According to him, he did not even work for the petitioner in the elections. Though he would attempt to disguise it, it is seen from his evidence that he is a close friend of the petitioner.

14. A further indication that Ex. A-15 and the cover Ex. A-14 could not have come into the hands of the petitioner in the manner alleged by them is furnished by the production of Exs. A-21, A-21(a) and A-22. These are genuine letters addressed to Paramasivam Naidu and their production makes us think that Paramasivam Naidu must have handed over Exs. A-15 and A-14 to the petitioner. The explanation of the petitioner is that one Perumal, a worker of his party, purloined Exs. A-21, A-21(a) and A-22 from the Congress office and gave them to him. But it is not clear why Perumal should at all have chosen to commit theft of such innocuous documents like Exs. A-21, A-21(a) and A-22. The explanation of the petitioner in paragraph 31 of his evidence is that Perumal knew that P.W. 16 had handed over Exs. A-14 and A-15 to him on 12th January 1952 and therefore must have thought that Exs. A-21, A-21(a) and A-22 might also contain reference to money matters like Exs. A-14 and A-15. But Ex. A-21(a) was an open cover and Ex. A-22 was not in a cover and anybody must have known from the mere look of Exs. A-21, A-21(a) and A-22 that they were inconsequential letters. From all the circumstances of the case, we are inclined to accept the evidence of R.W. 37 that he had reason to suspect Paramasivam Naidu of collusion with the petitioner and therefore relieved him of his duties at 9-30 a.m. on the day of election. The learned counsel for the petitioner makes capital of the fact that this fact of removal does not find place in paragraph 8 of the objection statement of the 1st respondent filed into court. But it appears to have been omitted accidentally, for it finds place in Ex. B-42, the manuscript notes which Sri A. Vaidyanatha Ayyar, the counsel for the 1st respondent took in his own hand when R.Ws. 37 and 38 gave him instructions for drafting the objection statement and also finds place in Ex. B-43, the typed draft in the hands of Sri Vaidyanatha Ayyar. We accept the explanation of R.Ws. 37 and 38 that they did not notice the omission of this fact in the statement filed into Court. It is unnecessary to speculate on the possible causes of this omission. One possible explanation is that R.W. 37 may have suggested that a reference to him in the objection statement might be avoided to obviate his figuring as a witness, but that is not the explanation of R.Ws. 37 and 38 and we do not think either that that was the case here, because R.W. 37 appeared evidently and genuinely surprised when the counsel for the petitioner drew his attention to the omission of the fact of removal of Paramasivam Naidu in the statement filed into Court. Further, if the omission was deliberately at the instance of R.W. 37 questions would not have been put in cross-examination to P.W. 16 on that basis and the clean copy of the objection statement, which was filed into Court on 7th May 1953 for the benefit of the members of the Tribunal, would not have contained this averment of removal of Paramasivam Naidu as found in Ex. B-43, the draft kept by Sri Vaidyanatha Ayyar. Above all, we find it impossible to accept the suggestion of the petitioner that R.W. 37 is lying deliberately on this point to explain away Ex. A-15. R.W. 37 is a lawyer of 13 years' standing and there is no reason why he should perjure on this point. On a consideration of the entire evidence on the point, we have no hesitation in rejecting the case of the petitioner as false and in consequently holding that the allegation of bribery in this instance is untrue.

15. Before leaving this instance, we must mention that the learned counsel for the 1st respondent contended that Ex. A-15 (and similar documents) would not be admissible as an admission against the 1st respondent. He put this on three grounds, (1) that under Section 18 of the Indian Evidence Act only statements made by an agent to third parties in the course of a transaction entered into by the agent on behalf of his principal with the third parties can be treated as admissions, that is statements which are part of *res gestae* alone will be admissible but not a statement contained in a report by the agent to his principal after the transaction is over. Thus, in this case, the bribe having been paid, Ex. A-15 would be merely a report of the fact of bribery and would not be an admission. Secondly, the learned counsel contends that a communication like Ex. A-15 is a confidential communication by an agent to his principal and cannot therefore be proved as an admission to the outside world. The third ground of exclusion urged is that the payment of the bribe being unlawful, the law cannot authorise an agency in such matters and therefore cannot confer any authority on the agent Paramasivam Naidu to bind the 1st respondent by an admission in such matters. He cited copious extracts from decisions and text books in support of his contention. On the other hand, Sri A. Lakshminarayana Ayyar, the learned counsel for the petitioner, contended that Ex. A-15 would be admissible under Section 18 of the Evidence Act. He conceded the proposition of law enunciated in the first ground of Sri

A. Vaidyanatha Ayyar, namely that a report by an agent to his principal of a transaction, which is over, cannot amount to an admission under Section 18 according to the English authorities. But Sri Lakshminarayana Ayyar distinguished the present case as falling outside the purview of that rule by urging that the transaction was not over in this case. According to him, the election was not yet over when Ex. A-15 was written and all the money intended for bribing voters had not been spent. As for the third ground, Sri Lakshminarayana Ayyar contended that in Election Law the act of the agent in bribing voters would equally affect the candidate even though the candidate had expressly forbidden the agent to bribe voters.

16. Sri Lakshminarayana Ayyar then went on to contend that even assuming that Ex. A-15 would not be admissible against the 1st respondent under Section 18, it would at least be admissible under Section 10 of the Evidence Act as a statement by a co-conspirator. Sri Vaidyanatha Ayyar for the 1st respondent urged in reply to this that the statement could not be admitted under Section 10 for two reasons: firstly it is settled law that before such a statement can be admitted under Section 10 there must be some evidence *allunde* to prove the conspiracy. But in this case the only other evidence is that of P.Ws. 16 and 25 which, as we have shown, could not be accepted and secondly he contended that it is equally settled law that a statement made by a co-conspirator after the conspiracy is over cannot bind the other conspirators for the simple reason that the intention of the parties has already been accomplished. In other words, in this case the bribe was already paid and so the conspiracy was over.

17. It seems to us that there is a lot of force in the contention of Sri Vaidyanatha Ayyar that Ex. A-15 is inadmissible as against the 1st respondent but we have chosen not to rest our decision on this narrow ground but on the broader ground of the merits of the evidence itself.

18. The next allegation of bribery is that contained in paragraph 5 of the petition which is in the following terms: "The returned candidate also distributed money for the purchase of votes in Badrakalipuram through his Congress underling Sri N. V. Ladaswami alias Ponniah, son of Vellayya Subbayya Thevar prior to and round about the election day." This is denied in paragraph 9 of the objection statement where 1st respondent says that he does not even know the said Ladaswami. P.W. 2, Karuppiah Thevar of Badrakalipuram, has been examined to prove the averment. He swears that Ladaswami Thevar, who was his neighbour, worked for the 1st respondent in the election and that the witness saw Ladaswami Thevar distributing bribes to as many as forty voters. The witness goes on to say that Ladaswami had a list of the persons bribed and that the witness stole it from the shirt pocket of Ladaswami. The shirt was on the pial of Ladaswami's house. Witness put his hand to take a packet of cigarettes being Ladaswami's friend, but found instead only the list. He took it and later gave it to the petitioner. The witness also says that he saw 1st respondent giving money to Ladaswami. The petitioner P.W. 25 also swears (see paragraphs 5 and 32) that Ladaswami Thevar worked for the 1st respondent and that P.W. 2 handed over Ex. A-6 to him at Bodinayakanur on 18th January 1952. P.W. 2 has professed to identify a portion of Ex. A-6 as being in the handwriting of Ladaswami.

19. The 1st respondent as R.W. 38 has stated (see paragraphs 3 and 17) that he does not know Ladaswami at all and that he did not give him any money or distribute any bribe through him. Subbiah Thevar (R.W. 21) has stated that it was he who worked for the 1st respondent at Badrakalipuram, that there was however no Congress Election office there that being the stronghold of the petitioner and that Ladaswami was not at all working for the 1st respondent.

20. We have no doubt that the evidence on the side of the petitioner about this incident is wholly false. If as claimed by P.Ws. 2 and 25 the petitioner had come by Ex. A-6 on 18th January 1952 and further knew that P.W. 2 had seen the payment of bribe, one would expect the petitioner to have mentioned those facts in the petition and the averment in the petition would not have been as bald as it is. Here again the petitioner would throw the blame on his counsel who drafted the petition but the explanation is obviously puerile.

21. The evidence of P.W. 2 is improbable from beginning to end. It is difficult to believe that 1st respondent paid money to Ladaswami in the open street at 4 p.m. in the presence of seven or eight people. It is not surprising that P.W. 2 is not able to name even one of them. It is equally improbable that Ladaswami openly distributed the money to several voters in broad day light on two successive days for one hour, sitting on the pial of the house and in the presence of a

staunch Socialist like P.W. 2. P.W. 2 would have it that this did not attract the attention of anybody else; but the height of falsity is reached when P.W. 2 swears that he followed Ladaswami inside the houses of each of the voters whom Ladaswami bribed and that Ladaswami did not object to his coming to all

22. It is again improbable that Ladaswami kept the incriminating list Ex. A-6 carelessly in the pocket of his shirt on the pial of his house making it convenient for Socialists to purloin it. P.W. 2 first stated that Ladaswami himself was present by his side when P.W. 2 put his hand into the pocket of Ladaswami's shirt but later he realised the absurdity of the reply and chose to say that Ladaswami was inside the house then and did not see him taking it.

23. The conduct of P.W. 2 was again in not keeping with his evidence. He did not object to Ladaswami bribing the voters though he was a Socialist. He did not complain to the authorities or to the petitioner or to the Socialist Election office at Bodinayakanur which was only four miles away. He admits that he met the petitioner several times between the dates when he first witnessed the bribery and when he handed over the list to the petitioner but he could not give the reason why he did not inform the petitioner about the bribery in that interval. P.W. 2 further admits that though he had the list with him at Bodinayakanur on 18th January 1952 when the results of the election were announced, he did not hand it over to the petitioner immediately but gave it only two days later. The evidence of the petitioner is different, namely that P.W. 2 gave it to him on 18th January 1952 itself, the date of the announcement of the results.

24. We have therefore no hesitation in rejecting the petitioner's evidence of this incident also.

25. The next allegation of bribery relates to the village Chinthalacheri (also referred to in the evidence as Peria Chinthalacheri or Church Chinthalacheri or East Chinthalacheri). The allegation in paragraph 6 of the petition is as follows:— "The returned candidate also purchased votes by distribution of money in Chinthalacheri village through his underling one Sri K. A. Chinnappa Odayar. This was also prior to or round about 16th January 1952. The said Sri Chinnappa Odayar was the official agent of the candidate in the booth of that village". Paragraph 10 of the objection statement denies that any money was distributed through this Chinnappa Odayar. P.W. 12 Rayappa Odayar has been examined by the petitioner to prove the allegation. He is a resident of Chinthalacheri and is a Harijan belonging to the Samban sect. His story is that Chinnappa Odayar summoned the leader of the Sambans, namely Kottayan Samban and paid him Rs. 50 for payment at the rate of Re. 1 to each Samban voter. The witness also actually saw Kottayan Samban pay forty voters at that rate. The witness goes on to say that before the Sambans were given money Chinnappa Odayar gave some six currency notes to Kanakali Madari, the leader of the Madaris, another sect of the Harijans. The further evidence of the witness is that Chinnappa Odayar was noting on a sheet of paper the names of the persons to whom he paid the money and the amounts paid. Chinnappa Odayar kept it on the table of the Congress Election office where all this took place and went out to take coffee asking P.W. 12 to remain in watch. But hardly had the back of Chinnappa Odayar turned then the witness took the list Ex. A-12 along with the newspaper and went away and later on 18th January 1952 he handed it over to the petitioner.

26. P.W. 25 too says (see paragraphs 6 and 33) that P.W. 12 handed over Ex. A-12 to him on 18th January 1952 and that Chinnappa Odayar worked for the 1st respondent.

27. Chinnappa Odayar examined as R.W. 6 denies the above facts completely and his authorship of Ex. A-12. The 1st respondent R.W. 38 also denies the allegations (see paragraphs 4 and 16).

28. It is the definite case of P.W. 25 in paragraph 33 of his evidence that as soon as P.W. 12 gave Ex. A-12 to him at about 8 p.m. on 18th January 1952 at Bodi he questioned P.W. 12 and learnt that P.W. 12 knew the payment by Chinnappa Odayar to Kottayan Samban and the payment by Kottayan Samban in his turn to the Sambans and had also seen the payment to Kanakali Madari and that all this took place on 15th January 1952, but yet we do not find any of these specific details mentioned in paragraph 6 of the petition. The petitioner would, of course, blame his counsel for the omission but we cannot accept that explanation. The inference is that the present evidence of P.Ws. 12 and 25 touching Ex. A-12 is false. The version of P.W. 12 is indeed unconvincing and contradictory. According to him, when Anthoni, the sister's son of Chinnappa Odayar came to his house and called him to the Congress office for receiving the

bribe he (the witness) stoutly refused and when Anthoni threatened to drive him out of the village he still declined to receive the money. If such was the case why should he at all have started from his house? The witness had no convincing explanation and finally said that he went to see how much money they were going to pay and also to dissuade the voters receiving the bribes and voting for the Congress candidate instead of voting for the petitioner who deserved their votes. But yet on reaching the Congress Election office he did not dissuade either Chinnappa Odayar from paying or any of the voters from receiving. At one stage he attempted the explanation that he started from his house due to the pressure of the elder of his community overlooking that earlier he had stated that the caste leader met him only after he had gone about twenty houses.

29. P.W. 12 again says that as soon as the other Sambans were paid they all went away but still he alone remained because Chinnappa Odayar asked him to stay behind in order to request him not to dissuade the other voters from voting for the 1st respondent. This evidence implies that Chinnappa Odayar knew that P.W. 12 sided the opposite party. Still we are asked to believe that Chinnappa Odayar chose to trust such a person for watching an incriminating document like Ex. A-12, thus providing P.W. 12 an excellent opportunity to commit theft. P.W. 12 says that his object in purloining Ex. A-12 was that he should hand it over to the petitioner but yet he did so only on 18th January 1952 after the results were announced and in the interval he did not inform anybody about this glaring and wholesale bribery.

30. Again his evidence contains an intrinsic indication falsifying his testimony about Ex. A-12, for according to his evidence as soon as he and the other Sambans went to the Congress office Chinnappa Odayar paid the Sambans and sent them away, noting the consolidated payment of Rs. 50 to Kottayan Samban, the leader, and that was the last payment, but Ex. A-12 contains five other entries after the entry of the alleged payment to the Sambans.

31. Similarly, while in the chief-examination the witness claimed to have seen the payment to the leader of the Madaris just before the payment to Kottayan Samban, his evidence in cross-examination belies that because according to that evidence as soon as the Sambans went there, Chinnappa Odayar paid them the money and sent them away and there was no other payment.

32. Similarly, P.W. 25 for his part did not note down the names of the voters bribed though they were furnished to him by P.W. 12 nor did he pursue the matter by making further inquiries. P.W. 25 admitted that P.W. 12 was his sympathiser though P.W. 12 himself would pass off as a disinterested person.

33. We accept the evidence of R.Ws. 6 and 38 denying the evidence on the side of the petitioner.

34. We find that the petitioner's case about this instance is also false.

35. The next allegation of bribery in the petition is contained in paragraph 7 and refers to the purchase of the vote of one Ayyar Kudumban of Sankarapuram, but no evidence has been let in to substantiate this.

36. Accordingly, our finding on issue 1 is that none of the instances of the bribery alleged in paragraphs 4 to 6 of the petition have been proved.

37. Issue 10.—The allegation covered by this issue is contained in paragraph 10 and it runs as follows:— "In one glaring instance, the bribing took the shape of a promise to build a public school for a village, and this promise was made on 14th January 1952 to the village elders, the leaders of the village community, in the village of Melachinthalacheri. Money was also paid on 14th January 1952 to these elders. Sri Naggappan Chettiar and others, and this petitioner understands that because the money so passed was not so utilised by some of the elders, there has been a dispute and a consequent panchayat to settle the dispute among the bribed." This allegation was denied *in toto* in paragraph 14 of the counter. As the allegation in the petition was vague, we directed the petitioner to give further and better particulars under Section 83(3) of the Act. Thereupon, on 28th November 1952, the petitioner submitted the following further particulars: "The 1st respondent offered about Rs 1,000 through M.S. Sannasi Founder of Melachinthalacheri to (1) M. S. Suruli Bommayya Gounder, (2) Naggappan Chettiar and (3) S. Perumal Gounder in Melachinthalacheri and the said M. S. Sannasi Gounder proclaimed by tom tom through Tandal Thiruman that the moneys had been paid by the 1st respondent to the said three persons and all should vote for the Congress candidate, the 1st respondent".

38. But when it came to the trial, a different and more detailed story was put forth by Kamaraaj Gounder, P.W. 4. He is a native of Melachinthalacheri and his evidence is that about twenty days before the day of election (10th January 1952) the 1st respondent came to the village and requested some respectable men to secure votes for him. They promised to consider it and let him know. About five days later, one Nagappan Chettiar of the village summoned some four or five respectable persons to his house and suggested that the entire village should be persuaded to vote solidly for the 1st respondent since the Congress party men were promising to build a school for them in that case and that he (Nagappan Chettiar) would hold himself responsible for the fulfilment of the promise. A few days later a public meeting was convened at which they asked Nagappan Chettiar to put his guarantee in writing so that they might vote solidly for the 1st respondent but Nagappan Chettiar declined and added that his oral word should suffice. Four or five days after this, a private meeting was convened in Nagappan Chettiar's house and the witness and others were told then by one Sannasi Gounder of the village that the 1st respondent had donated Rs. 500 for the unfinished school building and had promised timber in addition for the construction.

39. Again, on the evening of 14th January 1952 the witness was sent for to Nagappan Chettiar's house. There in the presence of Nagappan Chettiar, one Ramaraj, the cousin of A. S. Subbaraj paid Rs. 450 into the hands of Sannasi Gounder to be distributed to 900 voters at the rate of 8 annas each to induce them to vote for the 1st respondent. This was followed up by a public meeting on 15th January 1952 at which it was announced that voters who voted for the 1st respondent could get eight annas each by surrendering some slips in the shop of Nagappan Chettiar. The slips had as a matter of fact been issued to them earlier by Nagappan Chettiar's son Kamakshi and Perumal Gounder. After the meeting, the talayari Tiruman Madari also went round the village and announced by tom tom for the benefit of those voters who had not turned up at that meeting that they could also go and get eight annas each by voting for the 1st respondent. P.W. 4 actually saw about 400 voters producing their slips in the shop of Nagappan Chettiar and receiving eight annas. The witness concluded by saying that this sum of Rs. 500 paid for the school building was still with Sannasi Gounder but that the building has not been constructed.

40. The witness says in cross-examination that he mentioned these facts to the petitioner about a week after the elections. The evidence of the petitioner also is to the same effect (see paragraphs 6 and 34).

41. To refute the above evidence, the respondent examined Nagappan Chettiar as R.W. 3 and Perumal Gounder as R.W. 4. They have denied the allegations levelled against them completely. The 1st respondent has in paragraphs 5 and 13 of his evidence denied the averments.

42. It will be seen that the petition as originally drafted was very vague and even the further particulars furnished on 28th November 1952 did not specify the amount of the bribe but merely stated that it was about Rs. 1,000. It will also be seen that the case developed in the evidence is totally different from the case set out in the petition. Thus the important additional evidence is that besides the donation to the school there was a broadcast sowing of bribes among the voters at the rate of eight annas each to the extent of Rs. 450. This averment does not find place either in the original petition or in the amendment of 28th November 1952 and surely, if true, the fact should have been known to the petitioner and would have been mentioned by him. This circumstance is itself enough to stamp P.W. 4 as a liar. Again, according to the evidence, the donation to the school consisted of the sum of Rs. 500 and a promise of timber. But in the petition the donation to the school is mentioned as about Rs. 1,000 (though this itself was after a call for further particulars) and there was no reference to any timber at all. At least after this specific call from the Tribunal for further particulars, it is reasonable to expect the petitioner to ascertain them from P.W. 4. But if in spite of this the evidence is vitally different from the petition, the obvious inference is that the evidence of P.W. 4 is false and was not available to the petitioner even as late as on 28th November 1952.

43. Another important discrepancy between the evidence and the petition is that according to the petition the promise of donation for the school and the payment thereof took place on 14th January 1952 but according to the evidence of P.W. 4 the donation for the school had been received even ten days before the election, and what happened on 14th January 1952 was only the receipt of Rs. 450 for bribing the voters individually.

44. The petitioner, evidently realising that these variations between the evidence of P.W. 4 and the petition cannot be reconciled, stated in paragraph 6 of his evidence that P.W. 4 told him that the 1st respondent had paid Rs. 950 on 14th January 1952 for the school building, that it was decided by the villagers on 15th January 1952 at a public meeting that in consideration thereof they should all vote for the 1st respondent and that the decision was announced by tom tom through Talayari Tiruman. The petitioner has evidently resorted to this version to avoid serious departure from his own allegations in the petition, but if P.W. 25's evidence correctly and fully represents what P.W. 4 told P.W. 25 it would contradict the evidence of P.W. 4 himself materially: P.W. 4 himself was very much prevaricating as to what he told P.W. 25.

45. It will also be seen that P.W. 4 has not spoken to any hitch over the utilisation of the sum of Rs. 500 for the school, though the petitioner himself refers to it in the petition and in the evidence.

46. The evidence of P.W. 4 is quite improbable. It is most unlikely that the 1st respondent even if he wanted to purchase votes set about bribing voters on a mass scale in such an open fashion and had the fact tom-tommed, thereby deliberately courting trouble. As we said, if voters had been bribed in such an open manner and on a mass scale, the fact would have come to the knowledge of the petitioner and would have been mentioned in the petition and the fact that P.W. 4 has chosen to give such evidence is itself enough to brand him as a liar.

47. P.W. 4 implied at an earlier stage of his evidence that he was not present at the first private meeting in the house of Nagappan Chettiar but later said that he was present. He also seems to be a professional witness.

48. Under the above circumstances, we have no hesitation in accepting the denial by R.Ws. 3, 4 and 38. We find on issue 10 that this allegation too has not been made out.

49. *Issue No. 2.*—Paragraph 8 of the petition contains allegations about treating of voters with supplies of food by the 1st respondent. The first case specifically mentioned is that food was supplied at the 1st respondent's cost by Iswara Vilas Coffee and Meals Hotel, Pannaipuram. It is denied in paragraph 12 of the counter. Arunachalam Chettiar P.W. 22 has been examined to prove the averment. He claims to be a partner of the said coffee hotel, with one Palanisami Chettl. He swears that one Raju Chettiar who is related to him and was working for the 1st respondent in the elections came to his hotel with some voters, took meals and coffee and also took some food parcels promising to pay the money some time later. This was on 16th January 1952, the day of polling. Some days later P.W. 22 sent a bill Ex. A-17 to Raju Chettiar and he paid it about two days later.

50. P.W. 23, Natarajan, who was the polling agent of the petitioner at Pannaipuram says that one Sivasami Chettiar of Kattamalyanpatti, the village of Raju Chettiar, gave Ex. A-17 to P.W. 23 and that P.W. 23 handed it over in his turn to P.W. 25 the petitioner. The petitioner refers to this in paragraphs 12 and 41 of his evidence.

51. The 1st respondent has examined the said Raju Chettiar as R.W. 2 and he denies the allegation completely. He says that he did not at all work for the 1st respondent nor did he go to any coffee hotel in Pannaipuram at all on that day. In fact, he goes further and says that P.W. 22 did not carry on any coffee hotel in partnership with Palanisami Chettiar. The 1st respondent has also examined R.W. 23, the licencing clerk of the Madurai District Board to show that as per the registers of the District Board marked as Exs. B-28 and B-29 there was no coffee hotel bearing the name Iswara Vilas or the licencees of which were K. Palanisami Chettiar and Arunachalam during the year 1951-52 (1st April 1951 to 31st March 1952). He says that every hotelkeeper must necessarily take out a licence irrespective of the turnover and the registers show the hotels in existence during the year. The 1st respondent himself as R.W. 38 denied that food was supplied at his cost to voters from Pannaipuram or elsewhere.

52. There can be no doubt that the evidence on the said of the petitioner is false. The clue is furnished by the bald nature of the averment in the petition which is to the following effect: "The returned candidate also bribed the voters by distributing food slips to them, and there is evidence that he paid money to hotel-keepers for food supply to voters, not on a trivial and limited scale, and not in the mere form of customary hospitality. The food, for instance, in one

case, was supplied on the polling day at the respondent's cost by Iswara Vilas Coffee and Meals Hotel, Pannalapuram." It is strange that the petition does not mention the name of Raju Chettiar at all particularly having regard to Section 83 of the Act, if the present evidence is true. If the petitioner came by Ex. A-17 about a week after the election, one would expect him to have made further enquiries about it. But he admits in paragraph 41 of his evidence that he did not make any enquiry. He would not appear to have contacted P.W. 22 at all. In fact it is doubtful whether there was such a hotel in Pannalapuram and it is certainly more than doubtful whether P.W. 22 was a partner of that hotel. The evidence of the licencing clerk R.W. 23 shows that there could not have been any such hotel unless the hotel was unlicenced and the licencing Inspector had failed to inspect the hotel. P.W. 22 asserts, however, that there was a licence and it stood in the name of Palanisami Chettiar. This is belied by the evidence of R.W. 23 and it is worthy of note that no attempt was made by the petitioner to produce the alleged licence or even to examine Palanisami Chettiar. But granting for the sake of argument that there was such a hotel and that P.W. 22 was a partner thereof, it is difficult to accept the further evidence that Raju Chettiar brought the voters and had them treated. Apart from the fact that according to P.W. 22 the only basis for his presumption that Raju Chettiar was a worker of the 1st respondent and that the persons brought by him were voters was merely the statement of Raju Chettiar to P.W. 22, P.W. 22 has categorically admitted that there are accounts of the hotel and that those accounts would not however show this particular transaction at all. The accounts would be the best possible evidence and the admission clearly belies the present evidence of P.W. 22. It is easy to get up a document like Ex. A-17 which does not bear any serial number. Here again it is a mystery how Ex. A-17 which would normally be with Raju Chettiar has come into the hands of the petitioner. Sivasami Chettiar who according to P.W. 23 gave Ex. A-17 to him has not been examined by the petitioner though he is in the village. The absence of reference in the petition to Raju Chettiar, Ex. A-17 and P.W. 22 shows that the present case had not been thought of at the time of the petition. That is further indicated by the fact that the case set forth in the petition is somewhat different from the present evidence. According to the petition the voters were given food slips who on producing them in the hotel were supplied with food, but the evidence is different. Under these circumstances, we have no hesitation in accepting the denial of R.W. 2 and R.W. 38 and in rejecting the evidence on the side of the petitioner as false.

53. The petitioner's next allegation is that the malpractice (of treating) "was put to use both in Bodinayakanur and in certain of the villages in the constituency." Evidence has been let in about this malpractice in respect of three polling stations in Bodi, the first of which is the Nadar School in Tirumalapuram, polling station No. 96. P.W. 8, Annakamakshi Chettiar, was the polling agent of the petitioner in one of the men booths. P.W. 7 Ponnuthayi was a female voter. The evidence of P.Ws. 7 and 8 is that Jothi Subramanian a worker of the 1st respondent and some others came and distributed iddies and coffee to the women voters in the queue asking them to vote for the 1st respondent and that such of the women voters who refused to take the refreshments were beaten up by the police at the instance of the Congress workers. The result was that the Socialist women voters fled away in terror without voting. This took place at about 9 a.m. (the hour is not exactly specified). Petitioner turned up at about 10 a.m. Ex. A-10 is the complaint which P.W. 8 presented to him then. The petitioner (P.W. 25) has referred to this in paragraphs 14, 35 and also in paragraph 7.

54. Paragraph 12 of the counter denies the allegation. R.W. 7 and his wife were voters in that booth. R.W. 7 denies that there was any such distribution of refreshments or any beating of voters. R.W. 11 is Jothi Subramanian referred to by P.W. 8. He denies the evidence of P.W. 8. R.W. 32 is Sri Govindakutti Nair, the Circle Inspector of Police of Bodi. In paragraph 2 he says that he visited this particular polling station on the morning of 16th January 1952 and he saw no breaking of queues and no one complained to him of supply of refreshments or breaking of queues. Similar evidence has been given by the Returning Officer (R.W. 34) (the Deputy Collector of Usilampatti) and R.W. 35 the Assistant Returning Officer (the Tahsildar of Periakulam). The 1st respondent has also denied the allegation of treating.

55. At the outset it must be noted that the petition does not give any details which the petitioner was bound to give under Section 83 of the Act; it does not even particularise the polling stations though according to Ex. B-18 there were nine polling stations with 28 booths in Bodi, nor does it specify the offenders and the persons treated. This omission would at any rate throw a lot of suspicion about the genuineness of the evidence. It is also important to note that in the

long list of malpractices which the petitioner alleged in the telegrams which he sent to the authorities on the morning of 17th January 1952 (Exs. A-26 to A-28) he did not allege treating of voters with food though he specifically alleged that the polling personnel were so treated. This circumstance itself is enough to expose the falsity of the present evidence about supply of food and food slips to voters in the queues. Indeed, it is impossible to believe that the 1st respondent and his men would have been so foolish as to distribute coffee and iddies openly to voters standing in the queue. They should have known that even one such instance must invalidate the election of the 1st respondent. It may also be borne in mind that there were the police officers, the polling officers and also the agents of the other candidates apart from the petitioner. If the voters were treated on such a mass scale, it should have been possible for the petitioner to secure better and clinching evidence thereof. But the witnesses produced are interested and unreliable persons. It is worthy of note that even Ex. A-10 assuming it to have been given at 10 or 11 A.M. to the petitioner on 16th January 1952 does not allege that any voters were supplied with refreshments. According to the petition it would seem that only food slips were distributed to the voters as opposed to actual refreshments. That would be clear from a reference to the preceding sentence where the distribution of food slips alone is alleged and by reference to the succeeding sentence where distribution of food parcels to voters in queues is specifically alleged only in respect of Thevaram village. The conduct of P.W. 8 also clearly belies his present averment for he admits that he did not complain to the Presiding Officer or the Assistant Presiding Officer or to the Returning Officer when he inspected the booth at about 10-30 A.M. I shall show later that the evidence of P.Ws. 7 and 8 about the breaking up of queues and beating of women voters is also a myth. The evidence on the side of the respondent which is acceptable also bolies the present averment. We have therefore no hesitation in rejecting the allegation of treating in respect of this polling station as false.

56. The next instance referred to in the evidence relates to the polling station in V. M. High School and is spoken to by P.W. 17. (According to Ex. B-18 this must be polling station No. 94 or 95). P.W. 17 was a worker of the petitioner. He swears in his evidence that when he went to the V. M. High School after 1 P.M. he saw food parcels being brought in a jeep and Palaniappan, a member of the Town Congress Committee, and Thonthiappan Chettiar distributed food parcels to the Congress agents and voters who remained there.

57. Thonthiappan Chettiar has deposed as R.W. 13 that he did not do any such thing at all and a similar denial has been made by the 1st respondent as R.W. 38. It has also been elicited from R.Ws. 34 and 35, the Returning Officer and the Assistant Returning Officer, that in the course of their inspection of the booths they did not find any such malpractices nor was any such complaint made to them.

58. As in the previous instance, here again the omission in the petition of this particular polling station and the names of Palaniappan and Thonthiappan, the offenders, tends to throw considerable doubt on the truth of the present evidence even assuming that the omission is not sufficient to make the evidence itself inadmissible because of Section 83(2). Further, the petitioner did not allege this distribution of food to the voters in his string of grievances even in the telegrams which he sent to the authorities on 17th January—Exs. A-26 to A-28—(see paragraph 35 of his evidence). If the present evidence of P.W. 17 is true, it could have come to the knowledge of the petitioner and he would have mentioned it in those telegrams. The conduct of P.W. 17 also belies his evidence for he did not complain about it to any authorities either at the time of distribution or later. It is significant that he did not bother to ascertain the name of even one of the voters to whom food was distributed or the number of the jeep in which the food was brought. He is highly interested in the petitioner and must be having a grudge against the 1st respondent because he was dismissed from the V. M. High School of which the 1st respondent's cousin was then the Secretary. P.W. 17's antecedents are not quite creditable. As against this evidence the evidence on the side of the respondent is more acceptable. We have no hesitation in rejecting the evidence of the petitioner on this instance also as false.

59. The next polling station of Bodi referred to in the evidence is Maravar-chavadi, polling station No. 88. P.W. 18 Sheikh Muhammad was the polling agent of the petitioner there. He swears that food parcels were brought in a basket from the house of Kamaraj Servai nearby and distributed to the voters in front of the booth under the supervision of Kamaraj Servai, Chinnayyan Servai, Amcer Batcha and Ahmed, who were workers for the 1st respondent. The petitioner himself (see paragraphs 7, 35 and 39 of his evidence) swears that when he went to the booth at about 9 A.M., he saw food parcels being distributed to voters by

Kamaraj Servai. He adds that his personal messenger Kolandai velu who had complained unsuccessfully to the Presiding Officer Samuel Dorairaj was reported against by the Presiding Officer to the Circle Inspector Govindakutti Nair as an unruly lad and thereupon the Circle Inspector P.W. 1 had the boy arrested and kept in the police station till the next day. The petitioner's complaint to the Presiding Officer went unheeded. So, he sent telegrams to the Revenue Divisional Officer, the District Superintendent of Police and the Election Commissioner, Madras. The certified copies are Exs. A-23, A-24 and A-25. Samuel Dorairaj was the Headmaster of the V. M. High School of which the 1st respondent was the Secretary.

60. R.W. 14 is Ahmed Ibrahim and R.W. 31 is Kamaraj Servai. They deny that they distributed food parcels to the voters as alleged. R.W. 20 Kamarajha Naicker is a voter who denies the allegation. R.W. 30 is Samuel Dorairaj, the Presiding Officer of the polling station. R.W. 32 is Sri Govindakutti Nair, the Circle Inspector of Police. They deny that food parcels were distributed or that P.W. 18 or the petitioner made any complaint about it. They further explain that Kolandaivelu referred to by the petitioner created disturbance though he was not authorised to enter the booth at all being neither a polling agent nor a messenger and that was why he was taken into custody. That again happened only at 4 P.M. and the Circle Inspector did not go at all in the morning, as alleged by the petitioner. R.W. 34 is the Returning Officer who specifically denies that there was any complaint about distribution of food parcels. Similar evidence has been given by the Assistant Returning Officer R.W. 35 and by the 1st respondent as R.W. 38.

61. As in the previous instance, the non-specification in the petition of this particular polling station and the particular persons who are now said to have distributed the food parcels considerably weakens the petitioner's case. It is true that the petitioner sent telegrams Exs. A-23 to A-25 which specifically refer to this booth and another booth No. 93 but even those telegrams do not specifically allege any distribution of food parcels. They merely run thus. "The Presiding Officers of the polling booths Nos. 88 and 93 are partial. The Deputy Superintendent of Police is also partial. Election is unfair. Immediate action is necessary". Not even in the telegrams Exs. A-26 to A-28 which the petitioner sent the next day consolidating all the irregularities, does he refer to the distribution of food parcels and slips to the voters and that is significant because there is an express averment of feeding of polling officers. Indeed his evidence that he saw the distribution of food parcels is belied by the fact that in C.M.P. No. 1 of 1952 he stated that he came to know of the facts in paragraph 8 of the petition only on information received. It is unlikely that food was distributed to voters in the queue publicly as alleged by P.W. 18. He hopelessly contradicted himself as to when the food parcels were distributed, whether before the voters went inside the booth or just after they came out. He admits that he did not complain in writing about this malpractice to any authority. He is a partisan witness who attended the trial throughout and he even denies the visit of the Returning Officer and the Tehsildar. As against this evidence, there can be no hesitation in preferring the evidence of the respondent. It is unlikely that so many officers could have joined together to utter a lie on this point. We therefore find that this allegation is also false.

62. The petition next alleges that food parcels were supplied to the voters when they were standing in the queues in Thevaram village. This of course is denied in paragraph 12 of the counter. Ex.B-18, the list of polling stations, shows that there were not less than five polling stations in Thevaram (Nos. 109 to 113) but the petition does not specify the particular polling stations. In the evidence, however, Thangaraj P.W. 5 speaks to the malpractice having taken place in two of the polling stations, the Vivekananda Vidyalaya (No. 111) and the Board Girls School (No. 112). He was the worker for the petitioner. The distribution of food parcels was made between 10 and 11 A.M. by three Congress workers A. Arunachala Chettiar, Tiruvasanasambandam Chettiar and S. K. Ramasami Chettiar. Besides distribution in the queue voters were also taken in jeeps to the rice mill of Rajagopala Naidu and the tope of Sankaralingem Pillai and fed there by the 1st respondent's men. Since this last allegation does not find place in the petition which merely avers distribution of food in the queues, we indicated that the evidence on that aspect could not be taken into account as a charge and except in appreciation of the other evidence. The petitioner (P.W. 25) states in paragraph 13 of his evidence that P.W. 5 complained about the distribution of food parcels at about 8 P.M. on the polling day itself.

63. Arunachalam P.W. 6, another Socialist worker and the polling agent of the petitioner in the booth in the Co-operative Bank (113) put forward to prove similar distribution of food to the voters in his booth but he let the petitioner down by saying that there was no irregularity there. But he went on to say that when he came out of his booth he heard that food parcels were being distributed by the Congress men in the rice mill of Rajagopala Naidu and the *matam* of Sankaralingam Pillai and that he went there and found that about 1,000 people were being fed at about 10-30 or 11 A.M. We recorded his evidence only for the appreciation of the other evidence.

64. The 1st respondent has examined R.W. 5, a voter (see paragraph 3) and R.Ws. 8, 9 and 10 to disprove the alleged malpractice. R.Ws. 8, 9 and 10 are Arunachalam Chettiar, Tirugnanasambandam Chettiar and S. K. Ramasami Chettiar referred to by P.W. 5 in his evidence. R.W. 33 is Rahiman Ghatala who was the Circle Inspector of Police of Uthamapalayam at the time. Theyarani was in his best. He went to the polling stations in Thevaram on the polling day and no one complained of distribution of food to the voters in queues or that voters were brought in conveyances and fed by the 1st respondent. The 1st respondent himself as R.W. 38 has denied that allegation.

65. The non-specification in the petition of the particular polling station and the particular persons concerned in the malpractice robs the evidence of P.W. 5 and P.W. 25 of value to a considerable extent. It is strange that though P.W. 25 came to know of this malpractice from P.W. 5 on the night of 16th January 1952 itself, he did not refer to it in his detailed telegram of the 17th January. Exs A-26 to A-28 (see paragraph 33 of his evidence). It is unlikely that voters were supplied with food parcels openly in the queue inviting an election petition and criminal prosecution. In such an event the petitioner would have been able to secure disinterested evidence whereas P.Ws. 5 and 6 are obviously highly interested in the petitioner. The conduct of P.W. 5 belies his evidence. He would pretend that he orally complained to the policeman about the illegal supply of food but that the policeman replied that he could do nothing in the matter. Still he did not take further action. He did not send intimation to the polling agents in the polling stations nor did he complain to any authority. He admits that he met Rahiman Ghatala (R.W. 33) in the afternoon and that while he complained to him about the breaking of the queues of voters, did not complain about the distribution of the food parcels. It is no wonder that the witness is not able to give the name of even one of the voters to whom the food parcels were given nor the number of the policeman to whom he complained. His evidence about the distribution of food in the rice mill of Rajagopala Naidu and the *lope* of Sankaralingam Pillai and the similar evidence of P.W. 6 must obviously be false because they are not alleged in the petition at all. That shows the extent to which the petitioner's witnesses are prepared to go. As against the worthless evidence on the side of the petitioner, we have no hesitation in accepting the evidence on the side of the 1st respondent.

66. Evidence has also been let in of distribution of food slips to voters in Kombai, i.e., slips entitling the voters to supply of refreshments in hotels to the value of six annas. Now, Kombai is not mentioned at all in the petition and therefore this evidence is really inadmissible. Section 83(1) of the Act requires that the petition shall contain a concise statement of the material facts on which the petitioner relies and Section 83(2) enacts that the petition shall be accompanied by a list signed and verified in the manner prescribed setting forth full particulars of any corrupt or illegal practice which the petitioner alleges including as full a statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of the commission of each such practice. Then Section 83(3) provides "the Tribunal may, upon such terms as to costs and otherwise as it may direct at any time, allow the particulars included in the said list to be amended or order such further and better particulars in regard to any matter referred to therein to be furnished as may, in its opinion, be necessary for the purpose of ensuring a fair and effectual trial of the petition"

67. It is contended on behalf of the petitioner that where the petition contains a charge of a corrupt practice and some instances are given, it is always open to the petitioner to rely upon other and similar instances of the same charge and adduce evidence in support thereof. Reliance is placed in this connection on the Bombay City (M.U.) Case—*Mahomedally Allabux v. Jafferbhoy Abdul'abbhoy Lalji*—Hammonds Election Cases, page 173 and *Mymensingh Case—Abdul Jabbar v. Azizur Rahman* (Jagat Narain's Reports of Indian Election Petitions—Volume III, Page 215). The other cases cited by Mr. A. Lakshminarayana Ayyar do not turn upon the construction of rules similar to those enacted in Section 83 and do not therefore

require consideration. In the former of the two cases, it was held that the addition of further instances of the same charge does not constitute the making of a further charge of corrupt practices but only gives further instances of the commission of the same charge of the particular corrupt practice and is in fact an amendment of the particulars of the corrupt practice which was originally alleged. In the latter case it was decided that an election petition which gives some instances of bribery may be amplified by further instances of it and that it cannot be the policy of the law to hush up all corruption that is not discovered within a couple of months of the election. With great respect, we are unable to follow the decisions in the above cases. The question must depend entirely upon the interpretation of the provisions of Section 83(2) and (3) of the Act. Section 83(2), which is mandatory in character, requires full particulars of the corrupt or illegal practice relied on, including as full a statement as possible (1) as to the names of the parties alleged to have committed such corrupt or illegal practice (2) the date and (3) the place of commission of each such practice. Sub-section (3) empowers the Tribunal to allow the particulars included in the said list to be amended or order such further and better particulars in regard to any matter referred to therein. As pointed out in the Kistna case to which reference will be made later, there is no power to amend the list. The power is only to amend the particulars included in the said list. Adding of a fresh instance leaves untouched the particulars already furnished. There is abundant authority for the view that a fresh instance of a corrupt practice cannot be regarded merely as an amendment of the particulars of such corrupt practice and that each single instance of the corrupt practice alleged is a substantive charge in itself which has to be alleged in the original petition (see the cases cited in paragraph 268 of Doabia's Law of Elections and Election Petitions—Page 136). The Kistna Case (N.M.R.), 1928, reported in Hammond's Election Cases, page 447 is a leading authority on the point. Reference may also be usefully made to the Hizzar North (General) Constituency Case reported in Doabia's Indian Election Cases, Volume I page 297. It must therefore be held that with regard to treating at Kombai the evidence has to be rejected as inadmissible to establish the corrupt practice, but since the evidence has been recorded, we propose to deal with it on the merits also.

68. The more difficult question is, where some particulars have been given, but not to the entire extent required by law. The 1st respondent made no application to strike out the particulars or to obtain further and better particulars, nor did the petitioner apply for amendment of the same. Evidence has been adduced by the petitioner in respect of them and while several instances of corrupt or illegal practice set out in the petition may be open to the grave objection that sufficient particulars have not been furnished, yet we think it better to dispose of them on the merits, as evidence has been adduced by both sides in respect of them.

69. We now proceed to discuss the evidence relating to treating at Kombai. P.W. 3 Marudanayagam Mudaliar of Kombai, a Socialist worker, swears that food slips were distributed to the voters in the booths which entitled the recipient to the supply of refreshments of the value of six annas by presenting them in the hotels in Kombai. The chits were distributed by Congress workers of whom one was S. S. Maracayar.

70. Besides this direct evidence, the petitioner also relies on Ex. A-8 which is said to be a memorandum by Rangasami Gounder, alleged worker for the 1st respondent showing the amount for which refreshments were supplied to the voters by the hotels in Kombai. The evidence is that Rangasami Gounder was the Secretary of the local Congress Election Committee. P.W. 3 and P.W. 23 profess to identify the handwriting of the said Rangasami Gounder in Ex. A-8. To prove the genuineness of Ex. A-8 the petitioner relies on the fact that it forms part of a sheaf of papers which must have been written only by a Congressman. In particular, the petitioner relies on a sheet containing Ex. A-9 which contains instructions to polling agents over the signature of the said Rangasami Gounder. The signature in Ex. A-9 has been identified by P.Ws. 3 and 23. The petitioner himself states (see paragraphs 11 and 40) that this sheaf of papers containing Exs. A-8 and A-9 was handed over to him by Maheswara, the son of Rangasami Gounder about a week after the counting date 18th January 1952. He explains that Maheswara belongs to the Dravida Munnetra Kazhagam which was supporting the Socialist party at the elections.

71. Rangasami was cited as a witness by the petitioner and the petitioner's learned counsel was stating that he would be examining him at the end as he was not sure of his evidence. But finally Rangasami Gounder was given up by the petitioner. He was examined by the respondent as R.W. 36. He has denied that Ex. A-8 is his handwriting though he admits that it is similar to his. He, of

course, admits that Ex. A-9 is his signature. He denies that he wrote the memorandum like Ex. A-8 or made any arrangements for supply of any refreshments in those coffee hotels to voters.

72. S. S. Maracayar, one of the persons alleged by P.W. 3 to have distributed food slips, has denied the averment as R.W. 1. The 1st respondent has also denied the allegation.

73. If as sworn by the petitioner he came into possession of Ex. A-8 on 26th January 1952 itself, it is surprising that he did not refer to Kombai at all in the petition. The absence of any reference to Kombai in fact belies the evidence of P.W. 3 also because it is P.W. 3's case that he informed the petitioner about the distribution of food slips about 2 or 3 days after the results of the election were announced. Indeed, if any food slips had been distributed on such a mass scale, it would have surely come to the notice of the petitioner and he would not have failed to mention it in the petition. It is improbable that food slips were distributed in such an open manner. P.W. 3 admits that he did not complain about the matter to the Presiding Officer or to the polling agents or to anybody till he informed the petitioner which was about 2 or 3 days after the results were announced, an averment which we have seen must again be false. Of the numerous voters supplied with food slips he was able to name only three, namely, Krishnasami, Rangasami and Arunachala but it was proved by the production of the electoral roll Ex. B-13 that there was no voter like Krishnasami Gounder at all in Ward No. 5. Thereupon the witness in an evident anxiety not to commit himself in respect of the other two persons Rangasami and Arunachala, disowned knowledge of any particulars about them and finally went to the extent of saying that he did not see them go into the polling station at all though his earlier averment in paragraph 6 was that they were in booth No. 4 when food slips were distributed. It is even doubtful whether P.W. 3 went at all to any of the polling stations because, according to him, there were nine polling stations at nine different places in Kombai and there were two booths in each polling station, one for each sex. But this is belied by Ex. B-12, the list of polling stations which shows that there were only 3 polling stations (119, 120 and 121) in Kombai, the total number of polling booths being 8.

74. The petitioner's learned counsel has urged that even if the direct evidence of P.W. 3 is rejected, Ex. A-8 by itself would be proof of the supply of food to voters. But this assumes in the first place that Ex. A-8 has been proved to be in the handwriting of Rangasami Gounder. The proof, however, on the side of the petitioner on that point is not entitled to weight. P.W. 3 claims to identify the handwriting on the ground that Rangasami (R.W. 36) worked as a clerk of P.W. 3's son Palaniandavar, who is the village headman of Kombai and on the further ground that Rangasami used to write petitions for P.W. 3. Rangasami has denied that he worked as clerk for P.W. 3's son and apart from Ex. A-8 not even a single writing has been produced by the petitioner to discredit R.W. 36 on this point. P.W. 3's evidence shows that Palani Andavar has studied up to III Form and does not seem to require the assistance of R.W. 36. P.W. 3 in order to support his averment about R.W. 36's writing petitions for him has gone to the extent of saying that he would never ask his sons who were literate enough to write anything for him. P.W. 3 first admitted that his sons were living near his house, but realising that it would not suit the petitioner, he shifted the residence of his sons farther away. It is obvious from his evidence that he has no regard for truth and has prevaricated himself even on simple points.

75. Similarly, P.W. 23 claims to know the handwriting of Rangasami, because Rangasami used to write letters and accounts for him, but no such letter or account has been produced to contradict R.W. 36 who has stated that he does not remember to have written any accounts of P.W. 23. P.W. 23 admits that he has got two clerks to write accounts. P.W. 23 has chosen to utter lie even on a simple point as to when his relationship with Rangasami arose. P.W. 23's brother was married to Rangasami's daughter. P.W. 23 first chose to say that the marriage took place even before the elections but the printed invitation Ex. B-15 shows that the marriage was on 28th May 1952. P.W. 23 is in fact the partisan of the petitioner and incidentally it is he who claims to have received Ex. A-17 already referred to from Sivasami and handed it over to the petitioner an averment which we have disbelieved.

76. Again it is difficult to accept the petitioner's evidence that Maheswaran, the son of Rangasami, handed over the sheaf of papers containing Ex. A-8 to him about a week after the election, for in that case the petitioner would have mentioned about Kombai in the petition. Maheswaran himself has not been examined.

77. Thus, the positive evidence of identification of the handwriting on the side of the petitioner cannot be accepted. Barring that, there is not sufficient evidence to say positively that Ex. A-8 is in the handwriting of R.W. 36. Merely from the other papers attached to Ex. A-8 and its similarity to his genuine handwriting, we cannot say that Ex. A-8 is in the handwriting of R.W. 36. (If one could have been fabricated, the others too except Ex. A-9 could have been fabricated). But, even assuming that Ex. A-8 is in the handwriting of R.W. 36 it would not be safe to infer therefrom that it represents the truth. For one thing, as we have seen, the specific case put forward by the petitioner that he came by Ex. A-8 even on 26th January 1952 must be false. If that is excluded, there is no other explanation as to how the petitioner came into the possession of such a document written by R.W. 36 (of course, assuming that it was written by him). It is possible that R.W. 36 obliged the petitioner by writing out Ex. A-8 for him after the drafting of the election petition, though he does not admit it. Under all the circumstances, we reject the petitioner's evidence and accept the denial on the side of the respondent.

78. We find issue 2 in the negative.

79. *Issue No. 3.*—Paragraph 9 of the petition alleges that “in several places like Bodi, Kombal and Thevaram, the 1st respondent brought the voters by conveyances at his own expense to the booths”. This is denied in paragraph 13 of the counter. It will be seen that though there were several booths in Bodi, the petition does not allege in which booth the malpractice prevailed, who were the offenders etc. Evidence, however, has been let in that this malpractice prevailed in polling station No. 88 Maravorchavadi, P.W. 17 Vadivelu, a Socialist worker, swears in paragraph 3 of his evidence that he saw voters being brought to the booth in a country bullock cart flying a Congress flag by one Kamaraj Servai, who came behind the cart. He complained to the Presiding Officer Samuel Dorairaj R.W. 30 but the latter turned him out, the suggestion being that R.W. 30 being the Headmaster of the V. M. High School of which the 1st respondent was the Secretary, is a partisan of 1st respondent. Similarly, P.W. 18, the polling agent of the petitioner in one of the booths in that station, says that Kamaraj Servai and the workers of the 1st respondent brought the voters in jeeps. He protested to the Presiding Officer but in vain. The petitioner himself states (see paragraphs 16, 36 and 42) that between 2-30 and 3 P.M. he saw Kamaraj Servai coming behind one bullock cart in which two voters were seated.

80. To disprove these allegations, the 1st respondent has examined R.Ws. 14, 20, 30, 31, 32, 34, 35 and himself. R.W. 14 is Ahmad Ibrahim. He denies that he took voters in a conveyance. It will be seen that the petitioner's witnesses did not specifically charge him with any malpractice but it was stated on behalf of the 1st respondent that because R.W. 14 was said to be a worker of the 1st respondent R.W. 14 was examined to deny the malpractice. R.W. 20 is a voter. R.W. 30 is Samuel Dorairaj, the Presiding Officer. He expressly says that voters were not brought in any conveyance and that no complaint was made to him. R.W. 31 is Kamaraj Servai. He denies the allegation. R.W. 32 is Govindakutti Nair, the Circle Inspector of Bodi. R.W. 34 is the Returning Officer. R.W. 35 is the Assistant Returning Officer. R.Ws. 32 and 34 say that they went to this particular booth and nobody complained to them of any conveyance of voters. R.W. 35 has also given similar evidence.

81. The omission in the petition of the particulars now put forward namely, that the malpractice took place in Maravarchavadi polling station and was committed by Kamaraj Servai and Chinnayan Servai tends to falsify the present evidence having regard to Section 83. If the petitioner himself saw the illegal transport of voters it is surprising that he did not mention it in his catalogue of grievances in the telegrams which he sent on the 17th of January, Exs. A-26 to A-28. In the absence of such a contemporaneous complaint, it is difficult to accept partisan evidence like that of P.Ws. 17, 18 and 25. P.W. 17 cannot name or identify even one of the voters brought in the cart. He admits that he did not prefer any complaint to the authorities even after the Presiding Officer Samuel Dorairaj did not take note of his complaint. The conduct of P.W. 18 was similar. The inaction of P.Ws. 17 and 18 in fact does not inspire any confidence about their evidence. P.W. 18 would even deny the visit of the Returning Officer and the Assistant Returning Officer to explain his silence. He did not even note the number of the jeep in which the voters were brought though the jeep plied about 15 times and brought about 400 voters. We have already noticed his prevarications about the supply of food to the voters. As against the worthless evidence on the side of the petitioner, we have no hesitation in accepting the evidence on the side of the 1st respondent consisting mostly as it does of that of responsible officials like R.Ws. 32, 34 and 35.

82. In respect of Kombai. P.W. 3 Marudanayaka Mudaliar states that the voters came walking mostly but that old men were brought in jeeps by the workers of the 1st respondent and that the 1st respondent's men gave the fare. P.W. 25, the petitioner, states in paragraph 16 of his evidence that P.W. 3 informed him of this but does not say when.

83. Besides this, the petition alleges that a lady voter was brought in a jutka to the polling booth by a Congress agent Shanmughavel Chettiar, who paid the hire and that she admitted that fact in writing before the polling officer. P.W. 19, the Assistant Presiding Officer in the female booth, has been examined to substantiate this averment. He says that at about 3-30 P.M. he saw a woman come in a jutka. Two Congress volunteers got down from the jutka. The Socialist party agent objected to that lady voting on the ground that she had come in a jutka. So the witness sent for the Presiding Officer and the latter came and recorded a statement from that lady. No such statement, however, is forthcoming from the file submitted by the Returning Officer. Indeed the Presiding Officer examined as R.W. 27 by the 1st respondent denies the incident completely. He says that there was no such complaint at all and that he did not record any such statement from any lady.

84. R.W. 1 is S. S. Maracayar, one of the two persons who, according to P.W. 3, transported the voters in carriages. R.W. 1 denies that offence.

85. Taking first the evidence of P.W. 3, it is significant that the petition does not give full particulars and in particular does not mention the name of Maracayar and Majid. It will also be seen from the evidence of P.W. 3 that he went on changing his answers on the spur of the moment. He first stated that voters came walking mostly and then added that old men were brought in jutkas by Maracayar and Majid. In cross-examination, however, (see paragraph 11) he had to admit that he could not give the name of even one of the voters nor say in whose jutkas they were brought. He did not personally know the payment of the jutka fare by the agent of the 1st respondent: he confessed that it is only his surmise. He could not name the voters brought by Maracayar and Majid but said they were Muslims. Pressed further, he resorted to the expedient that the people brought by Maracayar and Majid were *gosha* ladies and that hence he could not say whether they were members of their families or outsiders. He admits that he did not complain about this malpractice to any one till the results were announced. We have already seen how his evidence is unworthy of credit in other matters.

86. It will be noticed that even the Assistant Presiding Officer P.W. 19 does not speak of any instance of illegal transport of voters except one case of a lady, but even that is falsified or at least rendered doubtful by the contrary evidence of R.W. 27. We prefer to accept the evidence of R.W. 27 and reject that of P.W. 19 especially since the evidence of P.W. 19 is not calculated to inspire confidence. For instance, though he says that a specific complaint was made to him, he does not know the number of the lady in the voters' list and her husband's name, nor did he ascertain the names of the Congress volunteers who accompanied the lady voter or the name of the owner of the jutka. The respondent has suggested that the witness is related to Devakanni, the brother's wife of the petitioner. P.W. 19 denies it. Whatever it is, the evidence of P.W. 19 cannot be safely accepted in preference to the evidence of R.W. 27. It is no doubt unfortunate that the Returning Officer has stated that most of the diaries of the Presiding Officers are not available (only three were received), but the consequence of that cannot be visited on the 1st respondent. It is for the petitioner to make out his allegation and he has not succeeded. We therefore find that this charge of transport of voters in Kombai has not been established.

87. *Thevaram*.—In respect of Thevaram also it will be seen that though according to Ex. B-18 there were as many as five polling stations with as many as twelve booths, the petition does not specify the particular booths to and from which the voters were transported nor does it specify the persons concerned. In the evidence, however, P.W. 5 (Thangaraj) says that voters were brought in jeeps and that the jeeps were plying to and from two polling stations allotted to the villagers, that is, polling stations Nos. 111 and 112 situated in Vivekananda Vidyalayam and District Board Girls' school. He also says that voters were brought in jeeps from their villages and taken to the rice mill of Rajagopal Naidu and the tope of Sankaralingam Pillai and fed there.

88. P.W. 6 (Arunachalam) appears to have been examined to speak to this malpractice in respect of another polling station in the Co-operative Bank, that is, polling station No. 113, but he says that there was no trouble in his booth, that he however heard that food parcels were being distributed in the rice mill of Rajagopal Naidu and the matam of Sankaralingam Pillai and that when he went there

he found one or two jeeps. He does not know to whom they belonged and he does not say that voters were brought in those jeeps.

89. P.W. 25 states in paragraph 16 that he heard from P.W. 5 about the transport voters in Thevaram.

90. Paragraph 13 of the counter denies the averment. R.W. 5 (Perumal Naidu) is a voter in polling station No. 112, booth No. 1, who says in paragraph 3 of his evidence that no voter was brought in a jeep. R.W. 8 is Arunachalam Chettiar and R.W. 9 is Tirugnanasambandam Chettiar. They deny that they brought voters in jeeps. It may be mentioned here that P.W. 5 beyond saying that Arunachalam Chettiar, Tirugnanasambandam Chettiar and S. K. Ramasami Chettiar worked for the 1st respondent during the election does not specifically say who it was that brought the voters in jeeps. However, the three persons have been examined by the 1st respondent as R.Ws. 8, 9 and 10.

91. R.W. 33 (Sri Rahlman Ghatala) is the Circle Inspector of Police, Uthamapalayam, within whose jurisdiction Thevaram lay. He went to the polling stations in Thevaram on the afternoon of 16th January 1952 and he says that nobody complained to him about transport of voters. The 1st respondent as R.W. 38 has also denied that voters were transported at his expense.

92. The bald nature of the averment in the petition throws considerable doubt on the genuineness of the present detailed evidence of P.W. 5. It has already been noticed that the petitioner did not put forth this grievance of illegal transport of voters in his catalogue of complaints in the telegrams which he sent on the 17th January (Exs. A-26 to A-28). It may therefore be fairly presumed that the present evidence is false. P.W. 5 admits (see paragraph 8) that he cannot give the name of even one of the voters who were brought in jeeps nor did he complain to his polling agents or the Presiding Officer or the Assistant Presiding Officer. He did not send a telegram or a written complaint to anyone. He would allege that he orally informed a police constable but he cannot give his name or number. He admits that he did not inform the Circle Inspector that voters were brought in jeeps. He professes to give the number of the jeeps as 3479 and 2118, but he does not know the district of registration and further if he knew the numbers they would have been mentioned in the petition. He has no hesitation in rejecting the evidence on the side of the petitioner and accepting the evidence on the side of the 1st respondent. In particular, the evidence of R.W. 33 shows that no such malpractice took place.

93. Accordingly, on issue No. 3 we find that the petitioner has not established this charge.

94. *Issues Nos. 4, 5, 6, 7 and 8.*—These issues relate to the alleged intimidation of the workers of the Socialist Party and general coercion. Paragraph 13 of the petition alleges that one Kalimuthu, a worker of the Socialist Party in the village of Bodī Meenakshipuram, had been threatened because he was working for the Socialist Party and that on 28th December 1951 Karuppiyah, Suruli and another who were the agents of the 1st respondent, chased him to his house, looted his house, drove him out and threatened him with murder. Paragraph 17 of the counter avers that this is a gross distortion of what was really a private dispute between Kalimuthu and his brother Suruli; it is stated that Kalimuthu had sold his house to his brother but refused to vacate it. It is alleged that the petitioner and one Selvaraj gave a twist giving a political colour to it.

95. Kalimuthu himself has not been examined as a witness for the petitioner. The petitioner's explanation in paragraph 17 of his evidence is that Kalimuthu had actually come to Court as a witness on 7th May 1953 but was taken away by his brother. The only evidence which the petitioner has adduced is a petition Ex. A-1, dated 28th December 1951, which Kalimuthu sent to the police. That petition alleges that Karuppiyah, Suruli and Palani threatened him because he was a Socialist and refused to work for the 1st respondent. This petition was enquired into by Sri Govindan Kutti Nair (P.W. 1), the Circle Inspector of Police, and he says that he warned both the parties. The petitioner says that Ex. A-29 is the copy of the petition which he received from Kalimuthu. The petitioner himself sent a petition Ex. B-3, dated 25th January 1952, by way of reminder complaining that the petition of Kalimuthu had not been enquired into, though actually the petition had been enquired into several times over. In fact, 1st respondent has marked the reports of the Sub-Inspector and the Circle Inspector with reference to Ex. A-1 as Exs. B-1 and B-2 and their reports about Ex. B-3 as Exs. B-4 and B-5. The reports are to the effect that it was really a private civil dispute between Kalimuthu and his brother and that a political twist was given to it by the petitioner.

96. Karuppiiah mentioned in the petition and in the complaint has been examined as R.W. 15. He denies that he or Suruli entered the house of Kalimuthu and looted his properties.

97. In the absence of Kalimuthu as a witness his complaints Exs. A-21 and A-29 do not prove anything. We are not concerned with the reason why Kalimuthu was not examined as a witness. Similarly, we doubt whether the reports of the Police officers are admissible. Thus, really there is no admissible evidence about this incident. However, we may observe in passing that we are inclined to agree with the contention of the 1st respondent that it was only a private dispute which was given a political twist.

98. The next instance under this head relating to Bodi Meenakshipuram is about the alleged intimidation of one Selvanayagam, a worker of the Socialist Party. This is described in paragraph 18 of the petition and forms the subject-matter of issue No. 7. It is alleged that "he was fined on 16th December 1951 by the elders of the community consisting of Sri Karuppiiah and others because he was working against the 1st respondent and the community elders exercised this form of coercion and intimidation to defeat a free election. The fine was paid and the intimidation had its effect". Paragraph 22 of the counter alleges that the version in the petition is a distortion and that what really happened was that the said Selvanayagam had written on the walls of the Chavadi of the Harijan community "what can a potter fellow do in the Assembly?", the reference being to the community of the 1st respondent. This was resented by the elders of the community and that is why they asked him to apologise and erase the writing which he did and in token thereof distributed pansupari or betels. The counter denies that Selvanayagam was fined for merely supporting the Socialist candidate.

99. Selvanayagam has not been examined by the petitioner. The petitioner states in paragraph 18 of his evidence that Selvanayagam came to give evidence but that his father, who worked for the 1st respondent, took him away forcibly. The petitioner has examined one Selvaraj as P.W. 11 to prove the allegation. His evidence is that their association decided to support the Socialist candidate in pursuance of the policy of the All-India Scheduled Castes Federation but that nevertheless Suruli, the leader of the Harijans of their village, decided to support the 1st respondent, the Congress candidate, because they were all depending on the 1st respondent for their livelihood and that the meeting of their community presided over by Suruli fined Selvanayagam for supporting the candidature of the petitioner and writing defamatory slogans about the caste of the 1st respondent on the walls.

100. The petitioner has also filed a complaint Ex. A-2 given by Selvanayagam to the police. In that Selvanayagam alleges that he was fined Rs. 12 by certain of his caste men for having written on the wall in support of the candidature of the petitioner and that the fine was reduced to two annas.

101. The 1st respondent has examined one Karuppiiah as R.W. 15. His version is that Selvanayagam was rebuked only because he had written the defamatory matter on the walls of the Chavadi and not because he had decided to support the petitioner. Selvanayagam apologised for his error and brought betels for two or four annas as usual; no fine was imposed; and he also erased the writing on the wall. R.W. 15 adds that P.W. 11 was not present at the meeting. The 1st respondent has also marked the reports of the Circle Inspector and the Sub-Inspector about Ex. A-2 as Exs. B-6, B-7 and B-8. They support the contention of the 1st respondent. P.W. 1 adds that notwithstanding the erasure he could see traces of the writing on the wall.

102. Now, P.W. 11 himself has admitted that the insulting reference to the caste of the 1st respondent had been written on the walls of the Chavadi and that it was objected to by the caste elders. The question, therefore, narrows itself to this, whether the rebuke administered to Selvanayagam was on account of the defamatory matter or because he had decided to support the Socialist candidate. It seems to us that the reason for the reprimanding of Selvanayagam must have been that he indulged in such offensive writing on the public walls of their Chavadi and not that there was any objection to his individually working for the petitioner. We may point out in this connection that, as admitted by P.W. 11, though numerous other Harijans also supported the candidature of the petitioner, Selvanayagam alone was singled out by the meeting for reproof. P.W. 11 must be disgruntled against the Congress because his application for nomination as a Congress candidate for the seat reserved for the Harijans was turned down and another Muthu was nominated and elected. It is also significant that in Selvanayagam's petition (really the petition and the reports thereon are inadmissible) no reference is made to the writing about the caste of the 1st respondent. It seems to have been

a deliberate suppression. If, as we have held, the reason for the rebuke administered to Selvanayagam was his action in writing such highly objectionable matter on the walls of the Chavadi, we do not think it would amount to undue influence within the definition in Section 123(2) or to coercion or intimidation within the meaning of Section 100(1)(b), nor has it been proved that 1st respondent and his agents had anything to do with this.

103 Next, paragraph 14 of the petition alleges that actual or intending workers of the Socialist Party were intimidated by "violent men employed and acting on behalf of the Congress Party such as Sri Peria Karuppa Thevar, Sri Ramalingam Pillai, Sri Venkata Rao and Sri Kandasami Mudaliar". Now, no evidence has been let in in respect of Sri Peria Karuppa Thevar and Sri Venkata Rao, but evidence has been let in about Sri Ramalingam Pillai and Sri Kandasami Mudaliar. Sri Ramalingam Pillai is the karnam of Bodi Meenakshipuram and P.W. 9 (Karuvalingam), a Socialist worker of that village swears that Ramalingam Pillai went from door to door canvassing votes for the 1st respondent and threatened voters with harm if they did not vote for him. P.W. 9 claims to have sent petitions about this to the authorities and he tenders a copy kept by him as Ex. A 11.

104 P.W. 11 (Selvaraj) swears that karnam Ramalingam Pillai was actively working on behalf of the 1st respondent by canvassing votes. It may be observed that in paragraph 14 of the petition there is no specific charge against the karnam about canvassing votes nor is there any allegation that he threatened the voters. The allegation is merely that he threatened the Socialist workers. So we decided to exclude the allegation of canvassing except for purposes of appreciation of the other evidence.

105. Paragraph 18 of the counter denies this allegation and Ramalingam Pillai examined as R.W. 17 denies the accusations levelled against him.

106 The evidence of P.W. 9 that the karnam canvassed votes and threatened the voters cannot be readily accepted because the petition does not contain such an averment. The petition merely charges Ramalingam Pillai with threatening the Socialist workers. Again, though in chief-examination P.W. 9 professed to have seen the karnam canvassing votes from door to door and threatening several voters, in cross-examination his personal knowledge of the threatening dwindled down to only one instance and that was in respect of Krishnasami Gounder. No explanation has been furnished by the petitioner for not examining Krishnasami Gounder. P.W. 9 further admits in cross-examination that he had not gone to any of the houses where the karnam went for canvassing votes. It is true he professes to have sent up complaints to the authorities, but there is no proof of the same. He claims to have the postal receipts, which he got, in evidence of his sending the petitions by registered post, but these postal receipts have not been produced. Nor was the Circle Inspector (P.W. 1) questioned whether any such petition was sent to him. Ex. A-11, which was marked subject to proof, is therefore inadmissible. There seems reason to think that P.W. 9 merely subscribed to Ex. A-11 without being aware of its contents, for he does not know who wrote the original petition nor at which place it was written. He seems to be a tool in the hands of the petitioner.

107 In respect of Kandasami Mudaliar the karnam of Pottipuram village, P.W. 21 (Suryanarayanaram) and the petitioner himself have given evidence. P.W. 21 belongs to Pottipuram Krishnayampatti and swears that the karnam went in a jeep flying a Congress flag to several villages and asked the voters including himself to vote for the Congress on pain of reprisals. The petitioner states in paragraph 19 of his evidence (see also paragraph 43) that he personally saw the karnam threatening the voters of Thimmanayakanpatti.

108 The karnam examined as R.W. 16 by the 1st respondent denies that he canvassed votes or that he threatened the voters or that he went about in a jeep flying a Congress flag.

109 As in the other instances it will be noticed that the petition does not give any particulars and is bald. P.W. 21's evidence dwindles down to vanishing point in cross-examination. He mentioned three specific names, Ganapathi Chettiar, Swaminathan Chettiar and Subramaniam Chettiar as voters who were threatened by the karnam and stated that they were threatened in their houses and that he himself remained outside their houses and that they were threatened on different dates. The question naturally followed whether on each occasion he went with the karnam to the houses of those persons. Thus the witness replied that he did not go to their houses at all and that he was merely told by them that they were so threatened. Similarly he admitted that he did not go to the several villages to which the karnam went and that he only heard from those villagers that the karnam had come to their villages. Thus, the witness is obviously prepared to stretch many points in favour of the petitioner. That is not surprising because he and the petitioner's brother trade jointly in cotton. He did not complain to the police when the karnam threatened him.

110 The evidence of the petitioner himself is none better. In paragraph 43 of his evidence he admits that he cannot specify the name of even one of the voters who were threatened by the karnam. He saw that only in one place and on one occasion and that was when the karnam was threatening twenty voters in the street about ten days before the election. He did not, however, file any written complaint or even orally complain to the authorities and would glibly say that he only spoke about it in his public meetings. He would urge that paragraph 14 of the petition refers to this, though it is not the case. In C.M.P. 1/52, the petition filed by him, his case was that the facts alleged in paragraph 14 came to be known to him only on information. That belies his present evidence. He would urge that he forgot to tell the lawyer that this particular instance was known to him personally.

111 Paragraph 14 of the petition then alleges that "one Subbiah Thevar of the Congress Party threatened P K Karuppiyah, a worker of the Socialist Party, on 28th December 1951, saying that he would trouble him with false complaints and murder and that this took place in and around Viswasapuram village". This is denied in paragraph 18 of the counter. Karuppiyah has been examined as P.W. 2. He swears that Subbiah Thevar, the Congress worker of his village Badrakalapuram, threatened him because he worked for the Socialist Party and refused to work for the Congress Party. P.W. 2 adds that he sent up a petition Ex A-7 to the police. It is dated 28th December 1951. Now, Subbiah Thevar has been examined by the 1st respondent as R.W. 21 and he denies that he threatened P.W. 2. R.W. 21 adds that Ex A-7 was merely a counterblast to an earlier complaint by him against P.W. 2 for setting up urchins to pelt stones at his jeep. R.W. 32 (the Circle Inspector) refers to the earlier complaint in paragraphs 11 and 18 of his evidence and files his report Ex. B-30 regarding Ex. A-7. In Ex B-30 he stated that Ex A-7 was a false petition sent merely as a counterblast to the earlier petition.

112. P.W. 2 admits that R.W. 21 is a respectable man. P.W. 2 himself has admitted the earlier petition and it seems to us that his petition Ex. A 7 must have been merely a counterblast to the earlier petition of R.W. 21 and not true. At any rate, we have seen that his evidence about the bribery through Iadaswami Thevar is false and it would be unsafe to act on the evidence of such an interested and unreliable man.

113 We hold that this instance has not been made out.

114 Paragraph 15 of the petition alleges that one A. S. Rangaswami, nephew of the 1st respondent, attempted to dash his car against a congregation of the workers of the Socialist Party consisting of the petitioner, Sri Karuppannan, Sri Muthalagu Servai and Sri A. Raju and that the matter was reported to the police. Earlier the same person is alleged to have tried to dash his car against two other Socialist workers, Dharmakkannu and Nallusami. The police searched for Rangasami but he absconded.

115 This is denied in paragraph 19 of the counter.

116 The only attempt made by the petitioner to substantiate the charge is by marking through the Circle Inspector (P.W. 1) the complaints Exs A-3, A-4 and A-5 given on 9th January 1952 by Dharmakannu, Raju and Ragunatha Servai with reference to the incidents alleged to have taken place the previous night. None of the persons concerned have been examined. Curiously, the petitioner too does not speak to this incident. The complaints by themselves do not prove the allegations. So too the reports by P.W. 1 and the Sub Inspector marked as Exs B 9 to B-11 marked on the side of the 1st respondent are inadmissible. We may observe, however, in passing that the complaints merely attribute Rangasami's action to drunkenness and only one of the three complaints, namely Ex. A 5, gives a political complexion to the incident but that is not one of the complaints referred to in the petition.

117. The next incident alleged in the petition (see paragraph 16) is that in Krishnapatti village the Socialist Party's flag was pulled down and torn to pieces by the workers of the Congress Party, namely Perumal Naidu and Muthalagar Naidu, under the instructions of the 1st respondent and along with this act a threat was held to the villagers that if they voted for Socialists they would similarly be roughhanded. Paragraph 20 of the objection statement alleges that what really happened was that when the Socialist Party attempted to hoist a flag on a tree belonging to an old man Perumal Naidu the latter resisted it, but he was not a worker of the Congress Party and it was not done at the instance of the 1st respondent nor was any threat held out. The police treated it as a purely private dispute.

118 P.W. 20 (Dhanushkodi) swears that they hoisted the Socialist flag over the common tamarind tree of their village twenty days before the election, that

Perumal Naidu came the next day and tied the Congress flag to the tree and had the Socialist flag pulled down by his brother's son Muthalagar Naidu and tore it off. Perumal and Muthalagar were working for the Congress. P.W. 20 gave a complaint to the police Ex. A-16. The petitioner swears (see paragraphs 21 and 44) that he learnt of the incident and went there, saw the torn flag and advised P.W. 20 to complain to the police. Ex. A-30 is the copy of the complaint which P.W. 20 sent to the petitioner. P.W. 25 adds that the police did not make any enquiry about this.

119. Perumal Naidu appearing as R.W. 5 has given a different version. He says that the tree was in his compound and that P.W. 20 asked his permission to hoist the Socialist flag there. The witness objected. Nevertheless, the next morning he found the Socialist flag flying over the tree. He sent for P.W. 20. P.W. 20 removed it. The flag was not torn by R.W. 5.

120. The Circle Inspector (R.W. 33) Sri Rahiman Ghatala swears that he enquired into Ex. A-16 and examined R.W. 5 and others and reported that the matter was one of civil nature as the tree belonged to a private party.

121. We are not quite convinced by the version of R.W. 5 that P.W. 20 quietly removed the flag and that nothing else happened. Having regard to the immediate complaint Ex. A-16 given by P.W. 20 it looks probable that the flag was pulled down by R.W. 5, but, at the same time, it may well have been due to the fact that there was some dispute about the tree. It may be noticed that P.W. 20 admits that though the police referred this petition as one of civil nature he did not pursue the matter and did not file a complaint before the Magistrate. Assuming, however, for the sake of argument that the tree was a public one and that R.W. 5 had no justification for tearing off the flag, it is a far cry to urge that it amounts to undue influence under Section 123(2) or to coercion and intimidation under Section 100 of the Act. It is significant that the threat to the voters which, according to the petition, accompanied the tearing off the flag and which is the gravamen of the charge, is not alleged in Ex. A-16 nor is it spoken to by P.W. 20 or the petitioner. Nor has any attempt been made to prove that the 1st respondent or his agents had anything to do with the acts of Perumal and Muthalagar.

122. In the result, we find issues 4 to 7 in the negative and against the petitioner. Issue 8 is also found against the petitioner.

123. Issue No. 9.—Paragraph 19 of the petitioner alleges that Mrs. Soundaram Ramachandran and some women volunteers freely moved inside the booths in Bodinayakanur town on the polling day and canvassed votes and that the protests of the voters and the agents of the petitioner went unheeded. Paragraph 23 of the objection statement denies this and states that Mrs. Soundaram Ramachandran was not in Bodi at all on 16th January 1952 and that she visited Bodi on 14th January 1952 and went away the same night leaving three Congress women volunteers of Gandhigram behind. Those three volunteers were appointed as messengers for the 1st respondent; but they had to be withdrawn as early as 9 A.M. (on 16th January 1952) because they were "so obscenely, vulgarly and rudely treated and abused and threatened by the petitioner's agents and men". There was no canvassing by them.

124. P.W. 17 (Vadivelu) swears that at about 8-30 A.M. on 16th January 1952 he saw Mrs. Soundaram Ramachandran canvassing the female voters in the queue in the V. M. High School to vote for the Congress candidate. P.W. 17 protested but she paid no heed.

125. It will be noticed that according to Ex. B-18 there were two polling stations in the V. M. High school, namely polling stations Nos. 94 and 95, referred to as the northern block and western block. It is not clear which of these polling stations is referred to by P.W. 17. Anyhow, R.W. 13 (Thonthiappan Chettiar), who was the polling agent of the 1st respondent in polling station No. 94, booth No. 3 swears that Mrs. Soundaram Ramachandran did not come to the polling station at all on the day of election and that neither she nor any Congress volunteers canvassed inside the booth or in the queues. Mrs. Soundaram Ramachandran has been examined as R.W. 24. She is running an institution in Gandhigramam. She swears that she was not in Bodi at all on 16th January 1952. She came to Bodi on 14th January 1952 but went away on the morning of the 15th January leaving three Congress women volunteers of Gandhigramam behind. They were K. Lakshmi, Ponnammal and Sitalakshmi. K. Lakshmi has been examined as R.W. 25 and Ponnammal as R.W. 26. Sitalakshmi could not be examined because she is in Sembodai near Vedaranyam, a comparatively distant place. R.W. 25 swears that she functioned as a messenger for the 1st respondent in the female booth in the V. M. High School, Bodi and that she did not however canvass any votes for him. She attempted once to go to the booth but the boys objected and as it was uncongenial she went away after three-quarters of an hour.

Similar evidence has been given by R.W. 26 who went to function as messenger in a different polling station, namely polling station No. 90, which we shall deal with presently. Reference may also be made to the evidence of the Circle Inspector (R.W. 32), the Returning Officer (R.W. 34) and the Assistant Presiding Officer (R.W. 35) that there was no complaint of any such irregularity when they visited the booths. R.W. 38 speaks to his withdrawal of R.W. 26.

126. We have no hesitation in saying that the allegation of the petitioner that Mrs. Soundaram Ramachandran canvassed in the booths in Bodi is deliberately false. She is a respectable lady and there is no reason to reject her evidence that she was not in Bodi on 16th January 1952. She is a member of the Madras Legislative Assembly and an M.B.B.S. She is a prominent public worker of the Congress and in charge of an institution in Gandhigramam. There is no doubt a discrepancy between the counter and the evidence, because according to the counter she left Bodi on the night of the 14th itself, but her evidence is that she went away on the morning of the 15th. But the cross-examination was not directed to this and the discrepancy is immaterial. It is impossible to believe that she would have falsely dared to assert her absence from Bodi on 16th January 1952. P.W. 17 admits that he did not make any complaint either orally or in writing to the Presiding Officer or any other authority about the improper canvassing. This is enough to falsify his evidence. As already stated, he must be having a grouse against the 1st respondent because he was dismissed from his post as a clerk in the V. M. High school. We have already seen that his evidence in other respects had to be discredited. It is true that the telegrams Exs. A-26 to A-28 sent by the petitioner on the 17th January alleged canvassing inside the booths, but it is significant that the petitioner himself does not speak to that fact personally. Further, Exs. A-26 to A-28 do not allege canvassing by any woman.

127. The learned counsel for the petitioner urges that the evidence of R.W. 26 that though she did nothing her presence was objected to is unconvincing, but it seems to us that she was probably jeered at by the boys and she finds it unpleasant to say what all happened. It is enough to observe that there is no reason to think that she canvassed votes and her presence was objected to on that ground.

128. Similarly, the evidence of P.W. 17 of canvassing inside the booth in Vellayan Chalai school polling station (polling station No. 90, booth No. 2) cannot also be accepted, for there again he admits that he did not give a complaint about it in writing to the Presiding Officer or to any other authority. He did not bother to ascertain the name of the girl who canvassed. We accept R.W. 26's denial of canvassing.

129. P.W. 24 (Meenakshisundaram), who was the polling agent of the petitioner in the female booth in the Pankajam school (polling station No. 93), has stated that in the afternoon two volunteers from Gandhigramam asked the voters in the queue to vote for the Congress candidate, but he does not know the names of the volunteers and he did not complain in writing. Hence the evidence cannot be accepted. Though it has not been specifically elicited from R.W. 28, the Presiding Officer of this polling station, that no canvassing was brought to his notice his evidence generally shows that no irregularities occurred.

130. On the charge of canvassing, for the sake of completeness, reference must be made to the evidence of P.W. 7 (Ponnuthayee) that a Congressman came and distributed iddles and coffee to the voters in the queue and asked them to vote for the Congress candidate. We have already considered this evidence in issue No. 2.

131. We, therefore, find that the charges of canvassing have not been established.

132. Paragraph 19 of the petition then alleges that "in several places the petty police at the instance of the returned candidate or his agents, broke the queues of voters, intending to vote Socialist, in order to defeat their votes by delaying and tying them out of voting altogether and in order to favour subsequent queues of voters who had been mustered by the Congress Party. This feature was visible in several booths in Bodinayakanur town and also in several villages like Markayamkottai and Sillamarathupatti and Thevaram. In Bodinayakanur town itself, Congressmen and the returned candidate's agents like Sri Chinnayyan Servai Sri Ramanathan Servai and others prevented the forming of queues by the petitioner's supporters early in the morning and threatened the supporters with bodily hurt and dispersed them". This allegation is denied in paragraph 23 of the objection statement where it is further stated that on the contrary it was the petitioner who created disturbance in the several places.

133. It will be seen that though according to Ex. B-18 there were nine polling stations with 28 booths in Bodi town, the petition does not specify the particular booths. The first polling station in respect of which evidence under this head has been let in is the polling station in Thirumalapuram Nadar school, that is

polling station No. 96. The concerned witnesses are P.Ws. 7 and 8 whose evidence has already been noticed on the charge of treating (*vide* paragraph Nos. 53 and 55). It may be recalled that their evidence is that because some of the female voters in the queue refused the offer of *iddlies* and coffee by the Congressmen, Jothi Subramaniam Chettiar pointed them out to the police and the police had them beaten up. P.W. 7 (Ponnuthayee) was one of the persons so beaten up. The women voters therefore went away in fear without voting. In particular, P.W. 7, her mother-in-law (Parvathi Ammal) and Chinnathayee went away without voting after complaining to the polling agent P.W. 8 (Annakamatchi). P.W. 8 presented a complaint Ex. A-10 about this to the petitioner when the latter turned up at about 10 A.M. P.W. 25 himself refers to this (*see* paragraphs 14 and 50). He relies on the telegrams Exs. A-26 to A-28 which he sent on the 17th January alleging *inter alia* that queues were broken.

134. R.W. 7 and his wife were voters in that polling station. He denies that refreshments were distributed or that queues were broken. Jothi Subramaniam has given evidence as R.W. 11 denying the allegations. The 1st respondent has also examined the officers, R.W. 32 the Circle Inspector, R.W. 34 the Returning Officer and R.W. 35 the Assistant Returning Officer, who say that when they visited the polling stations no such complaint was made to them. The 1st respondent also gives similar evidence. In addition, Ex. B-37 has been marked to show that P.W. 7 must have cast her vote and that her contrary evidence that she went away without voting must be false. It is the official marked copy of the voters' list which was sent by the Presiding Officer at the end of the day to the Returning Officer in a sealed packet and it has been summoned from the office of the Returning Officer. The underlining indicates that the persons concerned voted. Such underlining is to be found under voters Nos. 1401 and 1402 which relate to Parvathi Ammal and Ponnuthayee. Ponnuthayee is P.W. 7 and Parvathi Ammal is her mother-in-law. To obviate any suggestion that the underlinings could have been made subsequently without P.W. 7 having voted at all, the 1st respondent has also shown that the total number of underlinings in the marked list Ex. B-37 tallies with the number of ballot papers issued according to the No. 10 account Ex. B-39, the number being 420 in each case.

135. In the first place, the non-specification in the petition of the particular polling stations where the queue was broken and the particular voters were beaten robs the present testimony of much of its evidentiary value. It will be noticed that the petition does not say that the voters were beaten. On the contrary, the suggestion is that the only tactics adopted was delaying and tiring them out of voting altogether. Neither Ex. A-10 nor the telegrams Exs. A-26 to A-28 allege beatings specifically. They merely say that queues were broken. If indeed P.W. 7, her mother-in-law and Chinnathayee were beaten and P.W. 7 sustained a contusion also and the petitioner also turned up then as alleged by P.W. 7, it is surprising that the petitioner did not obtain medical certificates for the injuries at once. It is indeed unlikely that such beating could have taken place when the Presiding Officers and the other agents were present. What may have happened at best—and that is suggested by the evidence of P.W. 7—is that because some males gathered round the female queue, the police cleared the men, but that has been exaggerated. Nothing worth complaining could have taken place, for actually no complaint was preferred by P.W. 7 or P.W. 8 or by the petitioner in writing to the authorities. P.W. 8 admits that he did not complain to the Presiding Officer (*see* paragraph 5) or to the Assistant Presiding Officer or to the Revenue Divisional Officer, Usilampatti (the Returning Officer). A document like Ex. A-10 could be got up at any time but even there it is remarkable that it does not allege that the women voters were beaten or that they went away once for all without voting or that the police lorry driver to whom P.W. 8 complained beat him further. It is also noteworthy that the names of P.W. 7, her mother-in-law and Chinnathayee were not specifically mentioned in Ex. A-10. The reason evidently is that they had gone away after having exercised their votes as shown by Ex. B-37. In respect of the telegrams Exs. A-26 to A-28 we are also inclined to accept the contention of the 1st respondent that from the very beginning the petitioner realised that the 1st respondent would surely defeat him and that the petitioner was therefore systematically creating records for filing an election petition. At any rate, when the telegrams were not followed up by any detailed petition, no weight can be attached to the general nature of the allegation that queues were broken. We have no hesitation in rejecting the evidence on the side of the petitioner and in accepting the evidence on the side of the 1st respondent which disproves the allegation of the petitioner.

136. *Maravarchavadi*.—Next, P.W. 18 (Sheik Muhammad) the polling agent of the petitioner in the Mela Maravarchavadi Municipal school (polling station No. 88) swears that Congress workers prevented the Socialist voters from voting. He does not say who the workers were nor who the voters were, but he generally

says that the 1st respondent's men Kamaraj Servai and Chinnayyan Servai were bringing voters in conveyances. At another place he says that the distribution of food parcels was done under the supervision of Kamaraj Servai, Chinnayyan Servai, Ameer Batcha and Ahmed. It is probably to be presumed that these were the persons who prevented the voters from voting. Now, Ahmed has been examined as R.W. 14 and Kamaraj Servai as R.W. 31. They deny the accusation. R.W. 20 is a voter who also says that the voting went on in order. The Presiding Officer Samuel Dorairaj has been examined as R.W. 30. He is the Headmaster of the V. M. High school. He denies that any such malpractice took place. The Circle Inspector (R.W. 32) swears that when he went to this booth in the evening, neither P.W. 18 nor any others made any such complaint. Similar evidence has been given by the Returning Officer (R.W. 34) and the Assistant Returning Officer (R.W. 35). The 1st respondent has also denied that there was any such malpractice. Here again, the non-specification of these booths in the petition is a serious infirmity. It is easy to make partisan witnesses like P.W. 18 speak to such allegations, but it is difficult to accept such evidence in the absence of a contemporaneous complaint. It may be noticed that though the telegram sent by the petitioner on the 16th itself, namely Exs. A-23 to A-25, refer to polling station No. 88, it is not alleged that queues were broken. All that is said is that the Presiding Officer and the Deputy Superintendent were partial. In fact, the petitioner himself does not speak to any such queue breaking in this polling station. Even P.W. 18 does not expressly allege queue breaking. The conduct of P.W. 18 belies his evidence. He did not complain in writing to any authority. He would even deny the visit of R.Ws. 34 and 35. We have also seen how his evidence about the distribution of food parcels must be false. The overwhelming evidence on the side of the 1st respondent, particularly that of the disinterested officials, enables us to say with confidence that no such malpractice could have occurred, for the alternative inference would be that all of them have conspired together to suppress everything.

137. Evidence has also been let in about the queue breaking in the female booth in the Pankajam Elementary school (polling station No. 93). P.W. 24 (Meenakshisundaram) was the polling agent. He says that the Socialist voters had formed a queue even at 6 A.M. and that the Congress workers and the Assistant Presiding Officer Sankara Rama Subramaniam, who was a teacher of the V. M. High School, brought Congress voters and made them stand in a parallel queue. The witness protested saying that they should stand behind the Socialist voters in the same queue, but the Presiding Officer did not agree and suggested that he would allow the voters in the two queues to vote alternately. P.W. 24 asked him to give this ruling in writing which the officer declined to do. This dispute delayed the polling for half an hour. The petitioner also turned up and protested. The Circle Inspector and the polling officer had also come. The Deputy Superintendent of Police said that the ruling of the Presiding Officer was supreme and asked the Circle Inspector to break up the queue of Socialist voters. They were accordingly beaten and about 300 of them fled away. Thereby the Congress voters came to the front of the queue and voted. The petitioner (P.W. 25) says that he meant to include all this in the telegrams Exs. A-23 to A-25 which he sent (see paragraphs 8, 38 and 51 of his evidence).

138. R.W. 12 (Kandasami), who was the polling agent of the 1st respondent in booth No. 4 in this polling station, denies the incident completely and says that everything went off peacefully. He says that the petitioner came at 6-30 A.M. 274GofI Puran Singh 8point 30em Seecopy 7n4-7-53 Hare Hare Hare Hare Hare] but went away within five minutes after satisfying himself that the boxes were alright. The Deputy Superintendent of Police and the Circle Inspector did not come at 7-15 A.M. at all and the petitioner also did not come there. The Presiding Officer Subramania Siva (R.W. 28) has also denied the incident completely. Similarly, the Circle Inspector (R.W. 32) denies the incident in toto and says that he did not go there at all between 7 and 7-30 A.M. and went there only at 11 A.M. The Returning Officer (R.W. 34) swears that when he visited the booth no such complaint was made. He specifically made enquires about the telegrams Exs. A-23 to A-25 and the further telegrams Exs. A-26 to A-28 but found them to be baseless. Similar evidence has been given by the Assistant Returning Officer (R.W. 35). The 1st respondent (R.W. 38) has also denied that any such malpractice occurred.

139. Here again it is significant that the petition does not mention any of the details now alleged and does not even refer to the particular booth. It only charges the "petty police" with queue breaking but not the higher police officials. It is true that the telegrams of the 16th (Exs. A-23 to A-25) refer to this booth but then they do not come anywhere near the present allegations. The telegrams merely read: "The Presiding Officers of the polling booths 88 and 93 are partial. The

Deputy Superintendent of Police also is partial. Election is unfair. Immediate action is necessary." The petitioner did not follow up the telegrams by any detailed petition. It looks as though the petitioner was merely preparing the ground for an election petition creating records for that purpose. The question may be asked why the petitioner should have singled out these two polling stations in his telegrams and it may be urged therefrom that that circumstance would show that something must have taken place in those two stations. But the explanation is not far to seek. The President Officer in polling station No. 88 was Samuel Dorairaj, the Headmaster of the V. M. High School of which the 1st respondent was the Secretary. The Assistant Presiding Officer in polling station No. 93 was Sankararama Subramaniam, an assistant in that school. The petitioner probably selected those two booths for reference on that basis. We have seen the Presiding Officer Subramania Siva (R.W. 28) in the box. He is an embodiment of a peace-loving soul and we find it impossible to believe that he is uttering total falsehood. His evidence does not stand alone and is corroborated by the evidence of the other officers, R.Ws. 32, 34 and 35. To accept the evidence of the petitioner would mean that all these officers have entered into an unholy conspiracy to deny everything, an assumption which is certainly not consonant with reason or probabilities. Again as the cross-examination of the petitioner in paragraph 51 of his evidence shows, the total number of votes polled in this station clearly belies the petitioner's averment that as many as 300 Socialist voters had to go away without voting. When confronted with this fact the petitioner would attempt an explanation that after the Socialist voters went away, the Congress workers brought some others and made them vote. But this cannot be true since there was no challenge of such voters and there is no allegation in the petition of any such mass impersonation; in fact this explanation of the petitioner was invented by him on the spur of the moment. We have no hesitation in rejecting the evidence on the side of the petitioner as false or, at any rate, as wholly insufficient.

140. *Sillamarathupatti*.—In Sillamarathupatti there are three polling stations according to Ex. B-18 with four booths for each station. The petition does not specify the particular booth in which the queue was broken but evidence has been let in in respect of one female booth and one male booth in polling station No. 102 (P.Ws. 13 and 14) and in respect of a booth in polling station No. 104 (P.W. 15). Taking up the female booth in polling station No. 102, P.W. 13 (Muthupechi), who is a voter, states that she and the other voters Kamalammal, Ochammal and Bommakkal went and joined the queue at about sunrise and that the village headman Jaggayappan came and asked the Congress voters who came later to push them and take their places. The protested. Jaggayappan went and brought the police. The police beat them. So they went away without voting after complaining to A. S. Raju (P.W. 14) who was the polling agent of the petitioner in the neighbouring male booth.

141. P.W. 14 has given similar evidence in respect of the male booth in polling station No. 102. He says that he had arranged the Socialist voters in the queue as early as at 6 A.M. and that after one or two persons had voted, that is shortly after 7 A.M. Subbiah Thevar of Sangampatti (R.W. 21) brought about 150 Congress voters and tried to start a fresh queue. The witness protested. Subbiah Thevar conferred with the village headman Jaggayappan, Rangaraju and Thonthi Servai and brought the police, who beat the Socialist voters in the queue. The queue consisting of about 300 voters broke up and the Congress voters took their places. The witness complained to the Presiding Officer Somasundaram but he did not pay any heed because he was a teacher of the V. M. High School, Bodi, of which the 1st respondent was the Secretary. He offered to give a written report, but the Presiding Officer declined to receive it and asked him to complain about it to the higher authorities when they came.

142. P.W. 14 adds that he saw the voters in the female booth also running away and that P.W. 13, Angammal, Kamalammal and Bommakkal came and complained to him that they had been beaten. He tried to persuade them to stop but they were afraid and went away.

143. P.W. 14 proceeds to say that in the adjoining booth for Rasingapuram voters (polling station No. 104) also the policemen beat the male and female voters and that Samikannu (P.W. 15) the polling agent of the petitioner in that booth, came to P.W. 14 and complained. P.W. 14 immediately wrote a report Ex. A-13 and sent it through P.W. 15.

144. P.W. 15 (Semikannu) was the relieving agent of the petitioner in a booth in polling station No. 104. He says that he had arranged the queue of Socialist voters about 300 in number at 6 A.M. and that after some voted, Kandavel Chettiar and Perumal Gounder, two Congressmen, brought about 50 Congress voters and tried

to introduce them into the queue already formed out of place. The witness did not allow it. Subbiah Thevar of Sangampatti, Thonthi Serval and Rangaraj came there. Kandavel Chettiar and Perumal Gounder represented something to them. Rangaraj called two reserve policemen there and said something to them. Thereupon, those two reserve policemen beat the female voters in the queue of Socialist voters already formed and broke it. Kandavel Chettiar and Perumal Gounder put the Congress voters in the place of the Socialist voters who had been dispersed. The witness remonstrated with Kandavel Chettiar and Perumal Gounder but in vain. So he went to A. S. Raju (P.W. 14) in the neighbouring booth and complained to him. P.W. 14 said that similar malpractices were taking place everywhere, that he would write out a report (Ex. A-13) and asked him to take it to the petitioner. P.W. 15 handed over Ex. A-13 to the petitioner at Bodi, three miles away, at about 11-30 A.M.

145. The petitioner as P.W. 25 has stated in paragraphs 14 and 15 of his evidence (see also paragraph 50) that he got Ex. A-13 from P.W. 15 at Bodi at about 11 A.M. and immediately went to Sillamarathupatti. As soon as he reached the place in his car about 300 yards from the polling booth, voters came from a tope to represent something to him, but the policemen dispersed them by charging them with lathis. He denies that he held any meeting of the voters as suggested on behalf of the 1st respondent. It may be mentioned that this evidence has evidently been given to counter the suggestion of the 1st respondent that no trouble was created by the 1st respondent's workers but that the trouble was entirely due to the petitioner who tried to address the voters to vote for him and that the police had to intervene and stop it. It may also be mentioned that since the petition did not specifically make out any charge that voters were beaten up 300 yards outside the booth, this part of the evidence was not admitted as a charge against the 1st respondent but merely as a denial by the petitioner of the version of the 1st respondent.

146. The petitioner also relies on the fact that he sent the telegrams Exs. A-26 to A-28 on the 17th January mentioning *inter alia* "queues broken".

147. To disprove the evidence of the petitioner in respect of the polling station No. 102, the 1st respondent has examined Subbiah Thevar of Sangampatti (Viswasapuram) as R.W. 21. He was the relieving agent of the 1st respondent in the male booth of that polling station. He admits that Jaggayappan was inside the polling booth as official guide to identify the voters but says that he did not interfere with the voters and merely identified them. He specifically denies the evidence of P.Ws. 13 and 14. In particular, he says that neither the female voters nor the male voters were beaten up and the queues were not at all disturbed. R.W. 29 is the Presiding Officer. He too denies the allegations. The 1st respondent has also examined the Circle Inspector of Bodi, Govindankutti Nair (R.W. 32), the Returning Officer (R.W. 34) and the Assistant Returning Officer (R.W. 35). R.W. 32 states (see paragraphs 7, 8, 9, 14 and 17) that he visited Sillamarathupatti polling station between 12 noon and 1 P.M., that he met the petitioner there, that he did not complain that an attempt had been made to form a second queue and that the police constables beat the voters and broke the queue nor did anybody else complain to that effect. In short, there was no complaint to him of any irregularities in the course of his inspection of the polling stations.

148. R.W. 34 says similarly that he visited the polling station at Sillamarathupatti but did not find anything untoward and there were no complaints by the candidates or their agents or by the polling staff. R.W. 35 also has given similar evidence.

149. The above rebutting evidence holds good for the male booth in polling station No. 102 also.

150. The 1st respondent has also marked the voters' list of Ammapatti, the village of P.W. 13, as Ex. B-14 to disprove the evidence of P.Ws. 13 and 14 that Kamalammal, wife of Ponnusami Gounder, was one of the voters who came and was beaten. Ex. B-14 shows that there was no such voter.

151. In respect of the polling station No. 104 spoken to by P.Ws. 15 and 14 besides the above evidence of R.Ws. 21, 32, 34 and 35, 1st respondent has examined Kandavelu Chettiar as R.W. 18 and Ramasami Gounder *alias* Perumal Gounder as R.W. 19. It may be recalled that they are the two persons mentioned by P.W. 15 (Samkannu Thevar) as having brought 50 Congress voters and tried to introduce them. They deny the averment and they say that no such thing took place and that the voting went on peacefully.

152. Now, taking up polling station No 102, there is the initial drawback to the petitioner in that he did not specify that particular polling stations in the petition. Further, the petition does not speak of any beating up of the voters.

It merely alleges that queues were broken with a view to delay and fire out the voters. The petition does not specify any names of the persons who broke the queues. This, of course, has enabled the petitioner to let in whatever evidence he could get up at the time of the trial.

153. The second broad comment to be made against the petitioner is that no contemporaneous complaint was made. It is true that the telegrams Exs. A-26 to A-28, which he sent on the 17th, mention "queues broken", but that is vague and does not specify the places where the queues were broken nor the persons who did so and it was not followed up by any detailed petition and we have seen that the election petition itself does not mention any details. The witnesses, who are examined, are highly interested in the petitioner and very little weight can be attached to their evidence in the absence of any contemporaneous complaint. A document like Ex. A-13 could have been got up even after the election petition was filed.

154. The third broad comment to be made is that it is unlikely that the 1st respondent's men were foolish enough to resort to such systematic and open beating up of voters in queues in the presence of the polling personnel and the agents of the different candidates. If such queue-breaking and beating up of the voters took place and on the large scale suggested by the petitioner, it is strange that he has not been able to get up disinterested evidence. On the other hand, the 1st respondent has adduced evidence of the officers concerned, which is certainly disinterested. Their evidence shows that no such irregularities took place as alleged the petitioner.

155. If we bear the above broad facts in mind, there will be no difficulty in rejecting the evidence of the petitioner. In addition, we may note that P.W. 14 would pretend that it did not strike him to note the numbers of the policemen who beat up the voters. He did not complain to the police officer whom he saw. To explain his inaction, he does not hesitate to invent an explanation on the spur of the moment that that police officer also beat up the voters. It was at 1 or 1-30 p.m. and the petitioner was present then; but it will be seen that the petitioner does not speak to any such fact. P.W. 14 admits that he cannot give any reason why that police officer beat up the voters. Again, it is a telltale fact that though P.W. 13 and the other voters are alleged to have received injuries, it did not strike P.W. 14 and the petitioner to get wound certificates. Further, Ex B-14 shows that there was no voter like Kamalammal referred to by P.Ws. 13 and 14. P.W. 13 too admits that apart from complaining to P.W. 14, she did not complain to anybody else, which is strange. According to her, there were about 20 voters in front of her when she joined the queue at sunrise and there were about twenty voters again at 9-30 a.m. when alone the stampeding took place and the Congress voters behind pushed them. Yet, in the interval, she says that voters were voting continuously and peacefully. It is difficult to understand her evidence as to how the number of voters still remained at 20 even after 2½ hours of peaceful voting. This is evidently due to the fact that she is speaking to an imaginary complaint. She has made some admissions which support the case of the 1st respondent that it was the petitioner who came and created a disturbance by addressing the voters. Thus she has stated that some men collected at the gate and the policemen asked them to stand in the queue; but realising that she had admitted too much, she would say that the men themselves stood in a queue and the police did not arrange them. However, she has admitted that the petitioner came during the above incident and addressed the voters. She would however say that she did not see if the police came and restored order because just at the moment she went away and according to her evidence the time then would be 10 a.m. The petitioner is, however, anxious to dissociate his presence then and would say that he came much later at about 1 p.m., that he did not address the voters and that it was only a case of the voters coming to him to represent something to him about the police dispersing them. There seems to be another motive for the petitioner trying to fix the time of his visit to Sillamarathupattil as late as at 1 p.m., namely explain why he omitted to refer to the queue breaking in Sillamarathupattil the telegrams Exs A-23 to A-25, which he sent up on the 16th itself at about 11 a.m.

156. Similarly, in respect of polling station No. 104, besides the broad comments made above we may note that P.W. 15 too did not note the numbers or the names of the two reserve constables who indulged in beating. He did not complain to the polling agent or the officer inside the booth; nor did he complain to the Returning Officer and the Assistant Returning Officer. Above all, even Ex. A-13 does not refer to any untoward incident in polling station No. 104, though the story is

that Ex. A-13 was drafted after P.W. 15 went and complained about the happenings in polling station No. 104 and it was P.W. 15 who took Ex. A-13 to the petitioner. For these and other reasons, we have no hesitation in rejecting the evidence on the side of the petitioner relating to Sillamarathupatti also as false.

157. *Thevaram*.—In respect of Thevaram, though there were five polling stations, the petition does not specify the particular stations where the queue was broken. But evidence has been adduced in respect of polling stations Nos. 111 and 112 located in the Vivekananda Vidyalayam and the District Board Girls School. P.W. 5 (Thangaraj), a Socialist worker, swears that in the course of his inspection he saw the Socialist workers, who were standing in front in the queue, being "lathicharged" by the police constables to make way for the Congress voters who came late because they had to be fed first in the rice mill of Rajagopal Naidu and the tope of Sankaralingam Pillai. The result was that the Socialist voters fled away without voting and this deterred other prospective Socialist voters too. This happened between 10-30 and 11 A.M.

158. P.W. 10 (S.A. Kuppaswami), who was the Assistant Presiding Officer in Vivekananda Vidyalayam for polling station No. 111, swears that though there was brisk voting till 9-30 or 10 A.M. there was a sudden stoppage then and a huge noise was heard outside at the same time. He, the Presiding Officer and the other clerks remained inside for about five minutes, but as the noise increased he and the Presiding Officer came out, but the Presiding Officer went in again and (the witness) saw people outside fleeing. There was no queue of voters though there had been a queue at 7 A.M. He consulted the Presiding Officer sent reserve policemen to bring the voters back. On account of this disturbance the polling was interrupted for about half an hour. This witness is a clerk of the Municipal Office, Madurai.

159. The petitioner swears (see paragraphs 14 and 50 of his evidence) that he got reports of breaking of queues of Socialist (voters) in Thevaram on 16th January 1952 itself and that he sent consolidated telegrams Exs. A-26 to A-28 on 17th January 1952.

160. The petitioner also relies on a telegram Ex. A-34 sent to the Returning Officer on 16th January 1952 at 10-5 A.M. from Thevaram by one Sankaraswami Thevar in the following terms: "Election running badly by Congressmen. Start". But this Sankaraswami has not been examined. Hence the telegram by itself cannot prove the truth of the allegations in it.

161. The 1st respondent has examined R.Ws. 5, 9, 10, 33 and himself to deny the allegations. R.W. 5 (Perumal Naidu) was a voter in polling station No. 112, booth No. 1. He had to be in the queue from 9 A.M. to 10-45 A.M. Nothing untoward took place then. R.W. 9 is Tirugnanasambandam Chettiar and R.W. 10 is Ramaswami Chettiar. The 1st respondent has selected them because their names were mentioned by P.W. 5 as the 1st respondent's workers. They deny that the queue was broken or that voters were beaten. R.W. 33 is Sri Rahman Ghatala, the Circle Inspector of Police, Uthamapalayam, who went to Thevaram on the afternoon of 16th January 1952. No one complained to him about anything having taken place in Vivekananda Vidyalayam and the District Board Girls School; there was a complaint only by Congressmen about the Socialists' breaking of queues in some other polling stations.

162. The omission in the petition of the particular polling stations where the queue was broken and voters were beaten certainly detracts considerably from the present evidence on the side of the petitioner. It may be noticed too that even the telegrams Exs. A-26 to A-28 merely stated "queues broken" and did not allege that voters were beaten. Further, it did not specify the places where the queues were broken. For aught we know, they may have been only self-serving telegrams deliberately created. Even in the petition it will be noticed that it is not stated specifically that voters were beaten. If the voters were beaten so openly (which is unlikely), it is strange that the petitioner should have been able to muster only interested witnesses like P.W. P.W. 5's evidence cannot be accepted in the absence of a contemporaneous complaint. He is not able to mention the numbers of the policemen who broke the queue nor the name of any of the voters who were beaten. The evidence of P.W. 10 is clearly halting and artificial, particularly when he says that though they heard a disturbance outside they remained inside for five minutes. The reason why he deposes so is evidently that he does not want to say what the disturbance was due to and what happened before the people fled; similarly, his evidence that though both the Presiding Officer and he came out together after five minutes the Presiding Officer went back inside at once asking him to stay

outside is artificial. That again seems to be calculated to show that the Presiding Officer did not witness the persons fleeing outside and it was left to the witness alone to observe that fact. P.W. 10 indeed struck us as a partisan witness. His partisan character is revealed by his answer to the question whether he saw anything with the voters when they fled. His answer was: "Yes, they had some packets or samans which they had probably brought with them or could have been distributed to them". Evidently this is an oblique suggestion of food parcels having been supplied to the voters. It is impossible to accept his testimony that the polling was interrupted for about half an hour, for in that case the parties would have applied for an extension of time for polling. It will be unsafe to act on such evidence unless it is corroborated by the report which P.W. 10 and the Presiding Officer must have sent to the Returning Officer at the end of the day. Unfortunately, as observed earlier, most of these diaries are not forthcoming, but its consequence cannot be visited on the 1st respondent. It was he who summoned the diaries. The 1st respondent took out summons for the Presiding Officer, who is an Excise Inspector in the Central Government service, but the summons was returned with the endorsement that it had to be sent through the departmental superior and there was no further time. In any case, we have the evidence of the Circle Inspector (R.W. 33) that when he visited Thevaram in the evening, nobody complained of any queue breaking or beating of voters having taken place in these two particular polling stations. There is no reason why that evidence should be rejected or, at any rate, why the evidence of P.Ws. 10 and 5 should be preferred to that evidence. There is also the evidence of R.Ws. 9 and 10. It may be noted that those are not witnesses of the 1st respondent's choice but the 1st respondent was more or less obliged to examine them because they were the persons named by P.W. 5. This remark will hold good even in respect of the other witnesses who have been examined by the 1st respondent because they were also named by some or other of the witnesses of the petitioner. On a consideration of the entire evidence on this point, we find that the allegation has not been proved.

163. Paragraph 19 of the petition winds up with the following allegation:— "In Bodinayakanur town itself, Congressmen and the returned candidate's agents like Sri Chinnayan Servai, Sri Ramanathan Servai and others prevented the forming of queues by the petitioner's supporters early in the morning, and threatened the supporters with bodily hurt and dispersed them". No evidence, however, has been let in to prove this allegation, but instead evidence is sought to be adduced by the petitioner (see paragraph 9) about illegal confinement of some voters in a certain house. We rule it out as inadmissible: it is also disproved by the evidence of P.W. 1 (R.W. 32). There is no evidence either of any queue breaking in respect of Merkayankottai village referred to in the petition.

164. We accordingly find Issue No. 9 in the negative.

165 *Issues 11(a) and 11(b)*—We have already answered these issues in favour of the 1st respondent (*vide* our order dated 7th May 1953 in the Appendix).

166. *Issue No. 12*.—It will be clear from our detailed consideration of the specific grievances of the petitioner that there is absolutely no scope for saying that the election was not a free election. On the contrary, the evidence let in by the 1st respondent, particularly that of the officers, shows that the election was as free an election as possible. While on this issue, it only remains to notice briefly the contention of the petitioner that because the polling personnel were beholden to the 1st respondent it facilitated the commission of malpractices in the several booths. We have already taken this into account in considering the specific grievances and shown that there is no basis for this. Here it is enough to make observations of a general nature. In the first place, it has not been made out that the polling personnel consisted of persons obliged to the 1st respondent to any appreciable extent. Secondly, as a matter of law, it cannot be said that even the few officers in respect of whom the petitioner complains that they were virtual subordinates of the 1st respondent are persons who were "employed by or on behalf of or otherwise working for the 1st respondent in or about the election" within the meaning of Section 26 of the Act. Thirdly, as a matter of fact, the complaint of the petitioner in this respect does not at all seem to be *bona fide*. Though the list of polling personnel was published about a week before and he himself came to know about it five days before the election, he sent the telegrams Exs. A-18 and A-19 in the matter only on 15th January 1952. Naturally, the Returning Officer (R.W. 34) sent a reply Ex. A-20 stating that it was too late to make any reshuffling but however adding that the Assistant Returning Officer would make the desired changes. When the Assistant Returning Officer (R.W. 35) went to the election office of the petitioner at Bodi on the night of 15th January 1952 he could not find the petitioner but found one Vadivelu (P.W. 17)—the Election Convenor of the Socialist party—and the latter wanted

a change only in respect of four persons specified in Ex. B-40. R.W. 35 granted the request by transferring the first of them and replacing the other three by the reserve personnel. R.W. 34 took immediate telegraphic action on receipt of the telegram Ex. A-20. He sent telegrams Exs. B-31 and B-33 to the Assistant Returning Officer (Tahsildar, Periakulam) to make possible changes and another telegram to the Revenue Inspector, Theni (Ex. B-32); and the Assistant Returning Officer also did all that was possible—in fact all that was asked for. Considering that in the four constituencies for which R.W. 34 was the Returning Officer, as many as 2,000 persons were involved, a wholesale reshuffling at such a late date was absolutely out of question and, in our opinion, all that was reasonable and was requested was carried out. The petitioner has no doubt now alleged in his evidence that he had made an oral representation to the Returning Officer before 16th January 1952, but this must be false, because in the petition itself he says that he came to know of this only on 15th January 1952. The conduct of the Revenue Divisional Officer in replying to the petitioner that it was too late and directing the Tahsildar to make the necessary changes possible also shows that no representation was made earlier.

167. We find on issue No. 12 that it has not been proved that the election was not a free election and there is no ground for declaring it to be void.

168. Issue 13.—We find this issue in the negative.

169. Issue 14.—It follows that issue 14 also must be found in the negative. We may add that the petitioner's learned counsel Sri A. Lakshminarayana Ayyar definitely stated that he was not pressing this issue: in other words, that he was only pressing for the setting aside of the election of the 1st respondent and was not pressing the prayer that the petitioner should be declared elected. In fact, he has not made out any case for the same as required under Section 101 of the Act.

170. Issue 15.—It follows that the petitioner is not entitled to any relief and that the petition must be dismissed. We accordingly dismiss the petition with costs of the 1st respondent as taxed below (Rs. 783-15-0 besides the vakil's fee which we fix at Rs. 500). The petitioner will bear his own costs (Rs. 490-0-0 plus Vakil's fee of Rs. 500).

Pronounced by us in open Court, this, the 12th day of June 1953.

(Sd.) K. S. VENKATRAMAN, *Chairman*.

(Sd.) R. RAJAGOPALA AYYAR, *Member (Judicial)*.

(Sd.) P. R. NARASIMHA AYYAR, *Member (Advocate)*.

PARTICULARS OF COSTS:
(Incurred by the petitioner)

	Rs.	AS.	P.
1. Stamp on Vakalat	1	0	0
2. Stamp on petitions and documents lists	3	12	0
3. Process fee etc.	105	10	0
4. Subsistence allowance to witnesses	387	10	0
5. Vakil's fee (as fixed)	500	0	0
TOTAL Rs.	998	0	0

(Rupees Nine hundred and ninety eight only).

(Incurred by the 1st respondent)

	Rs.	AS.	P.
1. Stamp on Vakalat	1	0	0
2. Stamp on petitions and documents lists	9	0	0
3. Process fee etc.	87	11	0
4. Subsistence to witnesses	686	4	0
5. Vakil's fee (as fixed)	500	0	0
TOTAL Rs.	1,283	15	0

(Rupees One thousand two hundred and eighty three and annas fifteen only).

(Sd.) K. S. VENKATRAMAN, *Chairman*.

(Sd.) R. RAJAGOPALA AYYAR, *Member (Judicial)*.

(Sd.) P. R. NARASIMHA AYYAR, *Member (Advocate)*.

APPENDIX

FINDING ON PRELIMINARY ISSUES 11(a) AND 11(b)

Issue 11(b).—The 2nd respondent Sonnumuthu who is a defeated candidate, seeks to avoid the election of the 1st respondent on a ground not specified by the petitioner namely that the ballot boxes were tampered with by the Returning Officer. The 1st respondent contends that it is not open to the 2nd respondent to raise this issue when it has not been raised by the petitioner himself. The 2nd respondent is absent to-day and his counsel is also absent. The 2nd respondent is set *ex parte*. The petitioner himself does not rely on this ground and Sri A. Lakshminarayana Ayyar, the learned counsel for the petitioner, frankly stated that he cannot press this point. A reference to the provisions of the Representation of the People Act makes it clear that it is not open to the 2nd respondent to raise this point. In the first place, Section 80 says that no election shall be called in question except by an election petition presented in accordance with the provisions of this Part. Section 81 requires that the election petition should specify the grounds on which the election is sought to be avoided and Section 83 further requires a concise statement of the material facts on which the charges are founded. Excepting these provisions, the only provision allowing a respondent to make a complaint is Section 97 which says that where the petitioner seeks a declaration that he has been elected, the returned candidate or any other party may by way of recrimination allege that the petitioner himself is not entitled to be so declared for grounds on which if he had been elected his election should have been called in question. In such an event the returned candidate or the other party recriminating is also required to file a statement setting forth his grounds of recrimination within fourteen days and is further obliged to tender the security as if he had filed a petition in the first instance. He is also required to specify the particulars of the grounds of recrimination.

2. The 2nd respondent does not come under any of these provisions. They in fact make it clear that if he wanted to rely on this ground he should himself have filed an election petition specifying that ground. Considering the general principles also, it is clear that he cannot urge this point. For instance, he has not made the required deposit and at this rate there will be nothing to prevent the respondents other than the returned candidate from bringing forward frivolous charges and there will be no manner of compensating the successful candidate who will be unnecessarily asked to meet such unfounded charges. It is therefore abundantly clear that the 2nd respondent cannot urge this point and, as already stated, the petitioner himself does not rely on it. We answer issue 11(b) accordingly, namely that the election of the 1st respondent cannot be set aside on the ground covered by issue 11(a). Consequently, it is unnecessary to decide issue 11(a). No evidence therefore will be permitted on that issue.

(Sd.) K. S. VENKATRAMAN, *Chairman*

(Sd.) R. RAJAGOPALA AYYAR, *Member (Judicial).*

(Sd.) P. R. NARASIMHA AYYAR, *Member (Advocate).*

[No. 19/71/52-Elec.III/10080.]

By Order,

P. R. KRISHNAMURTHY, *Asstt Secy*

